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WHEN: Tuesday, November 9, 2010
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Practices and Procedures

AGENCY: Merit Systems Protection Board.

ACTION: Interim rule.

SUMMARY: The Merit Systems Protection Board (MSPB or the Board) is amending its practices and procedures regulations to make clear that the Board may, in its discretion, include discussion of issues raised in an appeal in a nonprecedential Final Order.

DATES: *Effective date:* October 5, 2010. Submit written comments on or before November 4, 2010.

ADDRESSES: Send comments to William D. Spencer, Clerk of the Board, Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419; (202) 653–7200; *fax:* (202) 653–7130; or *e-mail: mspb@mspb.gov.*

FOR FURTHER INFORMATION CONTACT: William D. Spencer, Clerk of the Board, Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419; (202) 653–7200; *fax:* (202) 653–7130; or *e-mail: mspb@mspb.gov.*

SUPPLEMENTARY INFORMATION: This amendment, adding a new paragraph (c) to 5 CFR 1201.117, which reflects recent changes in the Board's internal procedures, is intended to give the parties greater insight into the reasoning supporting the Board's decision in a particular case without requiring the Board to issue a precedential decision. The Board believes that including more information in its nonprecedential decisions will be beneficial to both appellants and agencies because both parties will more fully understand the Board's reasoning and have added assurance that the Board fully considered their arguments on appeal.

This amendment to 5 CFR 1201.117 also revises paragraph (b) to make clear that the Board may issue a final decision and, when appropriate, order a date for compliance with that decision.

List of Subjects in 5 CFR Part 1201

Administrative practice and procedure.

■ Accordingly, the Board amends 5 CFR part 1201 as follows:

PART 1201—[AMENDED]

Authority: 5 U.S.C. 1204 and 7701, unless otherwise noted.

■ 1. Revise § 1201.117 to read as follows:

§ 1201.117 Board action on petition for review or reopening.

(a) In any case that is reopened or reviewed, the Board may:

(1) Issue a decision that denies or grants a petition for review, modifies or supplements an initial decision, or reopens an appeal, and decides the case;

(2) Hear oral arguments;

(3) Require that briefs be filed;

(4) Remand the appeal so that the judge may take further testimony or evidence or make further findings or conclusions; or

(5) Take any other action necessary for final disposition of the case.

(b) The Board may affirm, reverse, modify, supplement, or vacate the initial decision of a judge, in whole or in part. The Board may issue a final decision and, when appropriate, order a date for compliance with that decision.

(c) The Board may issue a final decision in the form of a Final Order or an Opinion and Order. In the Board's sole discretion, a Final Order may, but need not, include additional discussion of the issues raised in the appeal. All Final Orders are nonprecedential and may not be cited or referred to except by a party asserting issue preclusion, claim preclusion, collateral estoppel, res judicata, or law of the case. Only an Opinion and Order is a precedential decision of the Board, and an Opinion and Order may be appropriately cited or referred to by any party.

Dated: September 29, 2010.

William D. Spencer,

Clerk of the Board.

[FR Doc. 2010–24864 Filed 10–4–10; 8:45 am]

BILLING CODE 7400–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[NRC 2009–0014]

RIN 3150–AI37

Domestic Licensing of Production and Utilization Facilities; Updates to Incorporation by Reference of Regulatory Guide

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to incorporate by reference the latest revisions of two previously incorporated regulatory guides (RGs) approving new and revised Code Cases published by the American Society of Mechanical Engineers (ASME). The RGs which are incorporated by reference are RG 1.84, "Design, Fabrication, and Materials Code Case Acceptability, ASME Section III," Revision 35, and RG 1.147, "Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1," Revision 16. This action allows nuclear power plant licensees, and applicants for standard design certifications, standard design approvals, and manufacturing licenses under the regulations that govern license certifications, and approves the nuclear power plants to use the Code Cases listed in these RGs as alternatives to requirements in the ASME Boiler and Pressure Vessel (BPV) Code regarding the construction and inservice inspection (ISI) of nuclear power plant components. Concurrent with this action, the NRC is publishing a notice of the issuance and availability of the RGs in the **Federal Register**. As a result of these related actions, the Code Cases listed in these RGs are incorporated by reference into the NRC's regulations and are deemed to be legally-binding NRC requirements.

DATES: The rule is effective on November 4, 2010. The incorporation by reference of RG 1.84, "Design, Fabrication, and Materials Code Case Acceptability, ASME Section III," Revision 35 (July 2010), and RG 1.147, "Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1," Revision 16 (July 2010) is approved by the Director of the Office

of the Federal Register as of November 4, 2010.

ADDRESSES: You can access publicly available documents related to this document using the following methods:

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Public File Area O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's electronic reading room at *http://www.nrc.gov/reading-rm/adams.html*. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

Federal Rulemaking Web site: Public comments and supporting materials related to this final rule can be found at *http://www.regulations.gov* by searching on Docket ID: NRC–2009–0014.

FOR FURTHER INFORMATION CONTACT: Manash K. Bagchi, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–2905, or by e-mail *Manash.Bagchi@nrc.gov.*

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I. Background

The ASME develops and publishes the ASME BPV Code, which contains requirements for the design, construction, and ISI of nuclear power plant components, and the *Code for Operation and Maintenance of Nuclear Power Plants* (OM Code), which contains requirements for inservice testing (IST) of nuclear power plant components. In response to BPV and OM Code user requests, the ASME develops ASME Code Cases which provide alternatives to BPV and OM Code requirements under special circumstances.

The NRC approves and/or mandates the use of the ASME BPV and OM Code in Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50.55a through the process of incorporation by reference. As such, each provision of the ASME Codes incorporated by reference into, and mandated by, 10 CFR 50.55a constitutes a legally-binding NRC requirement imposed by rule. As noted above, ASME Code Cases represent alternative approaches for complying with provisions of the ASME BPV and OM Codes. Accordingly, the NRC periodically amends § 50.55a to incorporate by reference NRC RGs listing new and revised[1] ASME Code Cases which the NRC approves for use as alternatives to the BPV Code and the OM Code. *See* 68 FR 40469 (July 8, 2003). It should be noted that for this particular rulemaking, RG 1.192, "Operations and Maintenance Code Case Acceptability, ASME OM CODE," is not being revised because there are no new or revised OM Code Cases considered by the NRC in this rulemaking. New and revised OM Code Cases published by the ASME since RG 1.192 was first issued, will be addressed in the next proposed amendment. This final rule will continue the NRC's practice of incorporating by reference the RGs listing the most current set of NRC-approved ASME Code Cases. ASME Code Cases may be approved for use, either unconditionally or with conditions stated in the relevant RGs. In developing the RGs, the NRC staff reviews ASME BPV and OM Code Cases, determines the acceptability of each Code Case, and publishes its findings in RGs. The RGs are revised periodically as new Code Cases are published by the ASME. The NRC incorporates by reference the RGs listing acceptable and conditionally acceptable ASME Code Cases into 10 CFR 50.55a. Currently, NRC RG 1.84, Revision 34, "Design, Fabrication, and Materials Code Case Acceptability, ASME Section III"; RG 1.147, Revision 15, "Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1;" and RG 1.192, "Operation and Maintenance Code Case Acceptability, ASME OM Code" are incorporated into the NRC's regulations at 10 CFR 50.55a, Codes and standards.

II. Response to Public Comments

The NRC published a proposed rule that would incorporate by reference RG 1.84, Revision 35, and RG 1.147, Revision 16, on June 2, 2009, 74 FR 26303. On the same date, the NRC published a parallel notice of availability of draft regulatory guides and opportunity for public comment. *See* 74 FR 26440. The NRC provided a 75-day public comment period for both the proposed rule and the draft RGs, which ended on August 17, 2009.

A. Overview of Public Comments

The NRC received nineteen comment letters on the draft regulatory guides and three general comments on the proposed rule. The following table lists the commenters, their affiliation, and the accession number to locate each comment letter. In addition, the Code Cases for which each commenter submitted comments are listed. Several general comments were also received.

COMMENT LETTERS RECEIVED ON DRAFT: REGULATORY GUIDE 1.84, REVISION 35 (DG–1191); REGULATORY GUIDE 1.147, REVISION 16 (DG–1192); REGULATORY GUIDE 1.193, REVISION 3 (DG–1193)

Commenter No.	Name	Affiliation/abbreviation	ADAMS Accession No.
1	Raymond West	Private Citizen/RW	ML091540204
		N–513–2/N–513–3	
2	Ronald Clow	DBA Xcel Energy/Xcel	ML091700640
		N–508–3/N–508–4	

[1] ASME Code Cases can be categorized as one of two types: new and revised. A new Code Case provides for the first time an alternative to specific ASME Code provisions or addresses a new need. A revised Code Case is a revision (modification) to an existing Code Case to address, for example, technological advancements in examination techniques or to address NRC conditions imposed in one of the regulatory guides which have been incorporated by reference into 10 CFR 50.55a.

COMMENT LETTERS RECEIVED ON DRAFT: REGULATORY GUIDE 1.84, REVISION 35 (DG–1191); REGULATORY GUIDE 1.147, REVISION 16 (DG–1192); REGULATORY GUIDE 1.193, REVISION 3 (DG–1193)—Continued

Commenter No.	Name	Affiliation/abbreviation	ADAMS Accession No.
3	C.L. Funderburk	Dominion Resources Services, Inc./DRS N–513–2/N–513–3	ML091750096
4	Brian Erler	American Society of Mechanical Engineers/ASME N–71–18, N–416–4, N–504–4, N–513–2/N–513–3, N–661–1, N–702, N–747, N–751	ML092190138
5	Edward Gerlach	Private Citizen/EG Two general comments—N–416–4, N–504–4, N–638–4, N–661–1	ML092190139
6	Lee Goyette	Pacific Gas & Electric Company/PGE N–597–2	ML092190140
7	Charles Wirtz	ASME BPV Standards Committee on Nuclear Inservice Inspection/CW. N–619, N–648–1	ML092220042
8	Robert Sisk	Westinghouse Electric Company/WECRS N–655–1, N–757–1, N–759–2, N–782, N–759	ML092220043
9	Patrick O'Regan	Electric Power Research Institute/EPRI N–716	ML092240576
10	Kevin Hall	Private Citizen/KH N–716	ML092250165
11	James Riley	Nuclear Energy Institute/NEI General comment—N–504–4, N–508–3/N–508–4, N–597–2	ML092370059
12	R.M. Krich	Tennessee Valley Authority/TVA N–520–1/N–520–2, N–702	ML092370060
13	J.A. Gresham	Westinghouse Electric Company/WECJAG N–655–1, N–757–1, N–759–2, N–782, N–759	ML092370665
14	Scott Chesworth	Structural Integrity Associates, Inc./SIASC N–716	ML092370061
15	Miroslav Trubelja	Structural Integrity Associates, Inc./SIAMT N–716	ML092370062
16	Sandra Sowah	Structural Integrity Associates, Inc./SIASS N–716	ML092370063
17	Daniel R. Cordes	ASME Section XI Subgroup Non Destructive Examination/DC N–583	ML092370064
18	Marcus N. Bressler	Private Citizen/MB N–71–18	ML092400356
19	T.S. Rausch	PPL Susquehanna, LLC/PPL N–416–4, N–504–4, N–638–4	ML092590124

Summary of Comments:

The proposed rule provided a 75-day comment period. A total of 19 comment letters were received from four private citizens, four utility organizations, seven industry groups that provide engineering and inspection services to the utilities, three associated with the ASME, and the Nuclear Energy Institute. Three general comments were received on the proposed rule regarding the need for editorial corrections (although two of the comments received from different commenters address the same subject). The majority of the comments received relate to Section XI Code Cases. Two comments were submitted requesting that the NRC include later versions of certain Code Cases in the final guide; 7 comments request that the NRC reconsider conditions on certain Code Cases; 1 comment requests clarification of a condition; and 3 comments provide additional technical information to justify moving certain Code Cases from RG 1.193 (Code Cases disapproved for use) to Regulatory Guide 1.147.

B. NRC Responses to Public Comments on Draft Regulatory Guide

Responses have been organized in two groups: Group I: Adopted Comments, that includes comments raising issues and concerns directly related to this rule, and have been adopted; and Group II: Comments not Adopted, that includes comments raising issues and concerns that are not directly connected to this particular rule, although they are generally relevant to this rule but have not been adopted.

Group I—Adopted Comments

General Comments: Edward Gerlach commented (comment EG1) that Table 2 in the proposed rulemaking listed accession numbers for Draft Regulatory Guides dated April 2009. The NRC's electronic reading room contains later versions of these Draft Guides dated June 2009.

Response: The accession numbers in Table 2 of the final rulemaking have been corrected to reflect the final versions of the regulatory guides. In addition, the accession numbers for all the documents have been verified.

Comment: Two commenters acknowledge that the titles of Code Cases N–712 and N–730 in Table 1 of the proposed rule had been inadvertently switched and should be corrected (comments EG2 and NEI3).

Response: The NRC agrees that there was an error in the rulemaking table. This table is not included in the final rulemaking, and no further NRC action is necessary.

RG 1.84

Code Case N–71–18

Comment: Two comments (ASME 1 and ASME 2) were received from the American Society of Mechanical Engineers on Code Case N–71–18, "Additional Materials for Subsection NF, Class 1, 2, 3, and MC Component Supports Fabricated by Welding, Section III, Division 1." The first comment (ASME1) was that the NRC proposed to impose the same conditions on Code Case N–71–18 as were imposed

on Code Case N–71–17, and some of the conditions are not appropriate to Revision 18 as certain references have changed (conditions (3) and (4)).

The second comment (ASME2) was that there appears to be confusion regarding whether or not the Code Case applies to component supports (condition 6). Marcus Bressler also commented on this Code Case (comment MB1) stating that conditions (1) and (2) aren't applicable to Revision 18 because the Code Case has no materials listed with a minimum tensile strength above 125 ksi.

Response: The NRC agrees with the ASME that the paragraphs referenced in conditions (3) and (4) should be modified. When Code Case N–71–17 was revised as Code Case N–71–18, certain references were rearranged. The editorial corrections have been made in the final guide so that the conditions are consistent with the references in the revised Code Case. The requirements for weld filler material hydrogen content were moved to paragraph 4.2 (previously in paragraph 5.3), and the requirements for postweld heat treatment were moved from paragraphs 16.2.1 and 16.2.2 to paragraphs 15.2.1 and 15.2.2 (paragraphs 16.2.1 and 16.2.2 no longer exist). As noted by the commenter, the conditions in Draft RG 1.84 should have been modified to be consistent. The conditions have been corrected in the final guide. With regard to the ASME's second comment (and similar comment from Marcus Bressler) on condition (6), the NRC's understanding of the intent of the provisions in the Code Case is not in agreement with the commenter's understanding, (*i.e.,* that the fracture toughness requirements as listed in this Code Case address Class 1, Class 2, and Class 3 component supports in addition to piping supports). The NRC believes that the fracture toughness requirements listed in Code Case N–71–18 apply only to piping supports. Implementation of this Code Case was approved by the NRC on this basis. Cognizant NRC staff will initiate discussions with the appropriate ASME committees.

The NRC agrees with Marcus Bressler that Code Case N–71–18 does not list materials with a minimum tensile strength exceeding the value of 125 kilograms per square inch. However, the NRC believes that conditions (1) and (2) are appropriate for this Code Case because they provide a cautionary note that high strength materials are susceptible to brittleness and stress corrosion cracking. As such, the NRC declines to adopt the comment related to conditions (1) and (2), and no change was made to the RG as the result of this comment.

RG 1.147

Code Case N–416–4

Comment: Three commenters (comments ASME3, EG3, and PPL1) requested that the NRC should not adopt the proposed condition requiring that when using Code Case N–416–4 "Alternative Pressure Test Requirement for Welded or Brazed Repairs, Fabrication Welds or Brazed Joints for Replacement Parts and Piping Subassemblies, or Installation of Replacement Items by Welding or Brazing, Classes 1, 2, and 3, Section XI, Division 1," that Nondestructive Examination (NDE) be performed for welded or brazed repairs and fabrication and installation joints as specified by the methods and acceptance criteria of the applicable subsection of the 1992 Edition of Section III. The commenters believe that the Section III NDE requirements are overly conservative relative to the NDE requirements of Section XI.

Response: The NRC disagrees that the condition is not needed. The NRC does not believe that an adequate argument was provided to justify deletion of the condition to require that NDE be performed for welded or brazed repairs and fabrication and installation joints in accordance with the methods and acceptance criteria of the applicable subsection of the 1992 Edition of Section III.

As discussed in the proposed rule for Draft Regulatory Guide DG–1192 for certain welding repairs or replacements, the previous version of this Code Case (Code Case N–416–3) permitted a system leakage test to be performed in lieu of performing a hydrostatic pressure test provided that certain requirements are met. A requirement was that NDE be performed on welded repairs, and that fabrication and installation of joints be as specified by the methods and acceptance criteria of the applicable subsection of the 1992 Edition of Section III. When Code Case N–416 was originally developed, the NRC agreed to the performance of system leakage testing in lieu of hydrostatic testing provided that NDE performed in conjunction with the repair met the requirements of the 1992 Edition of Section III. The requirement to perform NDE under Section III was removed when Code Case N–416–4 was issued.

The NRC believes that many analyses of the effectiveness and reliability of the later NDE requirements have demonstrated the inadequacies of earlier Code NDE requirements. Improvements in NDE have significantly increased the probability of detecting defects. With regard to leakage tests, the NRC staff's position was that even though the primary purpose of a leakage test is the leak-tightness of the primary pressure boundary, some additional assurance of primary boundary integrity was provided by the higher pressure hydrostatic test. Based on the industry conclusions that: the increased stress from a hydrostatic test is extremely unlikely to cause a subsurface defect to grow through-wall (and therefore, leak during a test) and the stresses involved in a hydrostatic test are similarly unlikely to cause leakage even with the presence of a through-wall flaw, the need for effective and reliable NDE is even greater.

Because the NRC has determined that pressure tests are not adequate for ensuring structural integrity (*i.e.,* adequate component repair and replacement), the NRC believes it to be paramount that high quality NDE be performed. Thus, the NRC rejects the argument that the lower quality NDE as conducted to earlier Codes is adequate. Accordingly, the NRC declines to adopt the comment, and no change was made to the RG as the result of this comment.

Code Case N–504–3, N–504–4

Comment: Four commenters (comments ASME4, EG4, NEI2, and PPL2) believe that all of the conditions the NRC proposed for Code Case N–504–4, "Alternative Rules for Repair of Class 1, 2, and 3 Austenitic Stainless Steel Piping, Section XI, Division 1," are unnecessary and should be removed in the final RG. One of the conditions requires that the provisions of Section XI, Nonmandatory Appendix Q, "Weld Overlay Repair of Class 1, 2, and 3 Austenitic Stainless Steel Piping Weldments," Section XI, must also be met in addition to the provisions of the Code Case was retained from RG 1.147, Revision 15, Code Case N–504–3. The commenters believe that changes to the Code Case and to Appendix Q address the NRC's concerns relative to Appendix Q and therefore this condition is no longer required. With regard to condition (a), the commenters believe that criteria in Code Case N–504–4 are more conservative than the proposed condition, and therefore condition (a) is not required. The commenters believe that conditions (b) and (c) regarding surface finish are redundant to criteria in Code Case N–504–4 and Supplement 11 of Appendix VIII. Finally, it was stated that there is no technical basis for restricting the use

of radiographic examination (condition (d)).

Response: The NRC disagrees that the conditions should be removed. It is true that a number of changes were made to the criteria of the Code Case and to Appendix Q as a result of concerns raised by the NRC. However, differences remain between Appendix Q and Code Case N–504–4 that were not addressed in the public comments submitted. For example, Appendix Q has requirements pertaining, in part, to the inspection and design of a structural weld overlay whereas the Code Case does not. Until the differences between Appendix Q and N–504–4 are addressed, the condition to follow Appendix Q must be retained.

It is clear from the comments, however, that condition (a) should be revised to make the objective clearer. The commenters believe that the limitations in the Code Case on laminar flaw size are more conservative than the proposed NRC condition, which indicates that the intent of the condition was not apparent. It is agreed that Code Case N–504–4 addresses laminar flaws, but the NRC does not believe that the provision is stringent or clear.

Condition (a) in the regulatory guide is needed to limit the number of laminar flaws in the weld overlay. If a weld overlay contains too many laminar flaws, the flaws may affect the structural integrity of the weld overlay. Accordingly, condition (a) has been revised to read "the total laminar flaw area shall not exceed 10 percent of the weld surface area, and no linear dimension of the laminar flaw area shall exceed the greater of 3 inches or 10 percent of the pipe circumference."

The NRC does not agree with regard to the comment that Code Case N–504–4 and Supplement 11 to Appendix VIII already address improving the surface finish of piping welds and therefore conditions (b) and (c) are unnecessary. The provision in Code Case N–504–4 cited by the commenters, "Grinding and machining of the as-welded overlay surface may be used to improve the surface finish for such examinations" is not a requirement and does not specify any criterion that must be met. Supplement 11, 1.1(c) states, "The surface condition of at least two specimens shall approximate the roughest surface condition for which the examination procedure is applicable." Thus, there is no specific criterion that must be met.

The NRC does not agree regarding the request to delete condition (d) and the restriction against radiographic testing (RT). Studies have been conducted indicating that radiography has the potential for detecting planar flaws with high reliability only under favorable conditions. Code Case N–504–4 provides alternative provisions for repairing austenitic stainless steel piping. Thus, the NRC believes this is a valid concern that planar flaws, typical flaws found during inservice inspections as opposed to volumetric flaws that result from fabrication, may not be detected through RT. Especially considering that digital radiographic testing may be used and factors such as exposure, screens, magnification, and source-target-detector distances have yet to be clearly defined. Without supporting technical information to indicate the reliability of RT for the particular conditions of interest, the NRC concludes that this condition to Code Case N–504–4 is necessary.

Code Cases N–513–2, N–513–3

Three commenters (comments RW1, ASME7, and DRS1) requested that Code Case N–513–3 be approved in final RG 1.147. They assert that licensees that have updated their inservice inspection (ISI) plans to the 2004 Edition of Section XI can no longer use Code Case N–513–2 because of limits on its applicability. Code Case N–513–3, which was recently published by the ASME in Supplement 8 to the 2007 Edition, addresses the applicability issue.

Response: The NRC agrees with the comment with one condition. Code Case N–513–2 was unconditionally approved in Revision 15 of RG 1.147. The applicability of the Code Case was through the 2001 Edition with the 2003 Addenda. The applicability was purposefully not extended by the ASME beyond the 2003 Addenda by the ASME because a revision to the Code Case (N–513–3) had been developed for application to later edition and addenda. The purpose of the revision to the Code Case (N–513–3) was to provide additional guidance to evaluate through-wall, nonplanar flaws. Users of Code Case N–513–2 had found the acceptance criterion for the branch reinforcement evaluation approach to be ambiguous, and there was a lack of adequate guidance for dispositioning nonplanar flaw combinations.

The NRC has reviewed the additional guidance resulting in Code Case N–513–3 and has determined that the additions are indeed clarifications and not technical changes. However, the NRC does not agree with one change regarding the time frame for repairs. Accordingly, Code Case N–513–3 has been conditionally approved in the final RG. Code Case N–513 was developed to reduce the number of plant shutdowns required to immediately correct insignificant degradation in Class 2 or 3 lower energy piping (maximum operating temperature of 200 °F and maximum operating pressure of 275 psig). Revisions 0 through 2 of the Code Case stated that certain flaws may be acceptable without performing a repair or replacement activity for a limited period, not exceeding the time to the next scheduled outage. The time frame for temporary acceptance of the degradation was modified in Code Case N–513–3 from "next scheduled outage" to "not to exceed 26 months from the initial discovery of the condition." The basis for NRC approval of the original time frame was that the degraded condition would be monitored and evaluated during continued operation, and operation was only approved until plant shutdown. Once the plant was shut down, it was expected that the degraded piping would be repaired. The extension of the time frame to 26 months from the discovery of the condition could permit operation through several outages. The NRC believes that the original time frame is prudent. The Class 2 and 3 systems addressed by the Code Case contain safety-significant components, and repairs should be performed at the first opportunity. Accordingly, Revision 3 of the Code Case has been included in the final guide with the condition that the repair or replacement activity must be completed during the next scheduled outage.

Code Case N–583

Comment: A commenter (comment DC1) requests that the NRC consider the removal of the conditions on the use Code Case N–583, "Annual Training Alternative, Section XI, Division 1," requiring practice "6 months prior" to performing exams, and leave "as-is" in the case to "annually." The commenter further suggests that if this is not acceptable, then a 6-month "proficiency" similar to the "annual proficiency" specified and implemented by ASNT CP–189 should be adopted. The commenter states that performing the practice on specimens with actual cracks is definitely beneficial, and that the ASME should adopt this position. However, after 10 years of implementation, the twice yearly requirement of the "hands on" practice has become significantly burdensome, specifically with logistics and cost of implementation, particularly for owners and vendors who generally employ the PDI qualified individuals.

Response: The NRC disagrees with the comment that the condition requiring practice six months prior to performing examinations should be deleted.

With respect to the commenter's recommendation to adopt a 6-month proficiency examination, the NRC believes this may be a viable option, but it would be more appropriate if the initiative and the technical basis for such an approach were developed by the industry. The NRC believes that the current requirement is justified. EPRI has conducted several studies on the relationship of education, training, and experience. The correlation was at best low and in some instances (such as experience versus ability to detect intergranular stress corrosion cracking (IGSCC)), the data showed a negative correlation. For example, a group of twelve ultrasonic examiners with approximately one-year of ultrasonic examination experience but with three weeks of quality training had a pass rate of 92.7 percent on the IGSCC detection practical examination. However, the success rate of individuals with experience averaging in excess of 7.7 years was only 37.6 percent.

One of the major keys to effective training is to perform a detailed task and skills analysis to determine the NDE parameters that impact detection performance. A number of these parameters such as illumination levels and calibration procedures are addressed in the conventional training course outlines. However, most outlines do not address the more subtle parameters such as visual search procedures and ultrasonic manual scanning techniques to assure coverage and effective beam orientation, nor do the outlines address the evaluation of subtle ultrasonic signal characteristics such as signal rise, decay time, and pulse duration. As appropriate, these issues must be identified and included in the training provided to examiners. Computer-based training, through the use of animations, simulation, and actual data, is evolving as an effective way to transfer this information.

In addition, many individuals do not routinely perform examinations, or they may not have recently had to interpret signals from cracks. Signals can be difficult to interpret. Although programs employ "qualified" personnel using qualified" procedures, operating experience, round robin trials, and research results have shown that skills will diminish without frequent training. Personnel and procedures must not only be qualified, but must also be effective. Experience and studies indicate that the examiner must practice on a frequent basis to maintain the capability for proper interpretation. In addition, these studies have shown that this capability begins to diminish within approximately 6 months if skills are not maintained. Class room instruction is not sufficient to maintain an examiner's skills in this highly specialized skill area. Examiner training needs to focus on hands-on training with flawed specimens.

With respect to the commenter's other recommendation to adopt a 6-month proficiency examination, the NRC believes this may be a viable option, but it would be more appropriate if the initiative and the needed technical basis for such an approach were developed by the industry. Accordingly, no changes are being made to the conditions at this time.

Code Case N–638–4

Comments: Two commenters (comments EG5 and PPL3) believe that Code Case N–638–4, "Similar and Dissimilar Metal Welding Using Ambient Temperature Machine GTAW Temper Bead Technique, Section Xl, Division 1," addresses the NRC's concern that the Section XI examination volume and acceptance criteria were not appropriate for the subject weld repair. Paragraph 4(a) of the Code Case requires that the examination of the repair be performed as specified by and meet the acceptance criteria of the Construction Code or Section III. Therefore, the condition is no longer necessary.

Response: The NRC disagrees that Code Case N–638–4 addresses the issue. The commenter is correct that paragraph 4(a)(4) of Code Case N–638–4 specifies the acceptance criteria for the surface and volumetric examination as the Construction Code or Section III; however, Code Case N–638–4 still does not specify that a demonstration must be performed with representative samples that shows the ultrasonic examination technique is capable of detecting construction type flaws in the repaired volume. Thus, a condition is required to address this issue. Based on the public comments received, the NRC believes that condition (1) on Code Case 638–4 should be revised to be clearer. Accordingly, the condition has been reworded to explicitly require demonstration with construction type flaws. Further, as a result of the review of the public comments, the NRC realizes that an additional issue must be addressed. Paragraph 3(d) of the Code Case establishes a maximum weld interpass temperature, and paragraph 3(e) requires that the weld interpass temperature be determined through one of the methods listed in subparagraphs (e)(1), (e)(2), and (e)(3). Subparagraph (e)(1) lists methods by which the temperature may directly be determined, subparagraph (e)(2) provides a method to calculate the weld interpass temperature, and subparagraph (e)(3) allows the use of a test coupon to determine the maximum weld interpass temperature. Code Case N–638–4 does not restrict or choose one method over another. Ensuring that the weld interpass temperature is not exceeded is important in obtaining a quality weld (*e.g.,* in terms of corrosion resistance, notch toughness). Direct measurement is the most reliable method for ensuring that the maximum temperature is not exceeded. The NRC recognizes that direct measurement is not always feasible, but direct measurements should be used whenever possible before alternatives such as those described in paragraphs 3(e)(2) and 3(e)(3) are used. This position is consistent with past precedent on this issue. Thus, a second condition has been added in the final guide stating that "The provisions of paragraphs 3(e)(2) or 3(e)(3) may only be used when it is impractical to use the interpass temperature measurement methods described in 3(e)(1), such as in situations where the weldment area is inaccessible (*e.g.,* internal bore welding) or when there are extenuating radiological conditions."

Accordingly, the condition (1) of the Code Case 638–4 in final Revision 16 to RG 1.147 has been revised to read as follows: "Demonstration of ultrasonic examination of the repaired volume is required using representative samples which contain construction type flaws."

Code Case N–661–1

Comments: Two commenters (comments ASME5 and EG6) stated that Code Case N–661–1, "Alternative Requirements for Wall Thickness Restoration of Class 2 and 3 Carbon Steel Piping for Raw Water Service, Section XI, Division 1," addresses the NRC's concerns discussed in the proposed rule.

Therefore, the conditions that address root cause and weld overlays can be deleted. The commenters stated that the only issue that may need clarification is the definition of "cycle or refueling outage."

Response: The NRC agrees that condition (b) on the Code Case can be deleted. The NRC staff has reassessed paragraph 1(d) of the Code Case and agrees that it addresses the issue of multiple repairs to the same location through weld overlay. The NRC disagrees however, that condition (a), "if the root cause of the degradation has not been determined, the repair is only acceptable for one cycle," can be deleted. The NRC believes that the condition is still required to provide the needed clarity on two issues. First, the

second sentence of paragraph 7(b) of the Code Case uses the term "cause" rather than "root cause." These terms have specific meaning to licensees. The NRC has determined that for the purpose of maintaining safety, it is appropriate to require a root cause analysis which is more rigorous than merely inferring the "cause" of the degradation. The second issue relative to clarity is the use of the term "one fuel cycle." As discussed in the proposed rule, it is unclear what one fuel cycle actually infers if a repair is performed in mid-cycle. It may be interpreted that the repair is acceptable for the remainder of the current fuel cycle plus the subsequent fuel cycle. In addition, other terms are used in the Code Case such as "one cycle." Although the Code Case provision and regulatory guide condition (a) are otherwise nearly identical, the NRC believes that for the sake of clarity and to ensure that a suitable re-inspection frequency has been established when the cause of the degradation is unknown or when the potential for hydrogen cracking exists due to the welding conditions, the condition is needed so that users are clear that what is meant is by "next refueling outage."

With regard to condition (c) which states "When through-wall repairs are made by welding on surfaces that are wet or exposed to water, the weld overlay repair is only acceptable until the next refueling outage," the NRC has the same concern regarding "next refueling outage."

While it is agreed that paragraphs 4(c) and 5(b) of the Code Case deal with the technical issues, the term one cycle is used. Accordingly, the NRC is retaining this condition in the final RG to ensure that it is clear that the requirement applies at the next refueling outage.

Code Case N–716

Comment: Five commenters (comments EPRI1, KH1, SIASC1, SIAMT1, and SIASS1) suggested that the NRC conditionally approve Code Case N–716, "Alternative Piping Classification and Examination Requirements, Section XI, Division 1," in the final Revision 16 of RG 1.147. The NRC has conditionally approved requests from four plants to use provisions similar to those in the Code Case. Based on the approvals, lessons learned from the pilot plant applications, as well as a number of follow-on applications, the lessons learned could be incorporated into the final Revision 16 of RG 1.147 to allow plants to use this Code Case in the short term. Approval of the Code Case for generic use will not only result in a substantial reduction in worker exposure and radwaste, but will also reduce unnecessary NRC staff burden, as compared to waiting until the Code Case is revised by ASME and subjected to further NRC review.

Response: The Code Case has not been included in final Revision 16 to RG 1.147. The NRC is continuing to gain experience with the review of risk-informed inservice inspection (RI–ISI) programs based, in part, on Code Case N–716. The NRC staff has not yet systematically identified all differences between the method described in the Code Case and those approved at individual licensees, nor has the staff received any such description by industry.

One issue not yet explored in the plant specific submittals is the application of Revision 2 of RG 1.200, "An Approach for Determining the Technical Adequacy of Probabilistic Risk Assessment Results for Risk-Informed Activities," which expands the scope of initiating events whose evaluation is required to be consistent with the ASME/ANS RA–Sa–2009 PRA Standard.

The review of EPRI Topical Report 1018427, "Nondestructive Evaluation: PRA Technical Adequacy Guidance for RI–ISI Programs" is proceeding according to schedule. A request for additional information (RAI) was transmitted to EPRI on September 15, 2009. An NRC staff endorsed document describing acceptable PRA quality requirements for RI–ISI will be necessary for the NRC to endorse some version of Code Case N–716 in RG 1.147. Accordingly, Code case N–716 has not been included in the final revision 16 of RG 1.147.

Code Case N–751

The American Society of Mechanical Engineers (comment ASME6) does not believe that Code Case N–751, "Pressure Testing of Containment Penetration Piping, Section XI, Division 1," should be conditioned because the Construction Code, which may or may not have included provisions for NDE of piping welds in penetrations, continues to apply. Therefore, the presence or absence of specific NDE provisions in the Construction Code should not be a reason to condition the use of the Code Case.

Response: The NRC disagrees that specific nondestructive examination (NDE) requirements are not needed. As discussed in the proposed rule, the Code Case would allow an Appendix J Type C test to be performed as an alternative to the ASME Code requirement to pressure test piping that penetrates a containment vessel, if the piping and isolation valves that are part of the containment system are Class 2 and the balance of the piping system is outside the scope of Section XI. The NDE requirement associated with the system leakage test was removed from Section XI paragraph IWA–4540 of the 2003 Addenda (and later edition and addenda of the ASME Code). In addition, for plants that used the ASME B31.1 Code for construction, there was no requirement to volumetrically examine certain piping components during fabrication.

Section XI requires NDE per the construction code as part of repair and replacement activities. Thus, if a B31.1 plant or a licensee using the 2003 Addenda or later performs a repair to certain Class 2 or Class 3 piping, there is no requirement to perform NDE. Volumetric examination after repair or replacement is required to ensure high quality welds. It was stated in the public comments that the industry has concluded that pressure tests are not adequate for ensuring structural integrity (*i.e.,* adequate component repair and replacement). Therefore, it is paramount that high quality NDE be performed. Volumetric examination ensures high quality welds capable of performing their design function for the life of the component. Therefore, the condition on the use of Code Case N–751 that when a 10 CFR part 50, Appendix J, Type C test is performed as an alternative to the requirements of IWA–4540 (IWA–4700 in the 1989 edition through the 1995 edition) during repair and replacement activities, nondestructive examination must be performed as specified by IWA–4540(a)(2) of the 2002 Addenda of Section XI has been retained in the final RG.

Group II—Comments not Adopted

Code Case N–508–4

Comment: Two commenters (comments Xcel1 and NEI4) requested that Code Case N–508–4 be listed in the final RG because the Code Case would be beneficial to the industry.

Response: The NRC declines the suggestion to adopt Code Case 508–4 in the final guide. It would not be appropriate to include Revision 4 to the Code Case in the final guide without first having sought public comment on such a significant expansion of the scope of the Code Case. Code Case N–508–3, which was unconditionally approved in Revision 15 of RG 1.147, allowed snubbers and relief valves to be rotated from stock and installed on components for the purpose of testing or preventive maintenance. Code Case N–

508–4 was published by the ASME in Supplement 8 to the 2007 Edition, and it significantly expands the list of components through the addition of pumps, control rod drive mechanisms, and pump seal packages. The Code Cases listed in this supplement will be considered in the next draft of RG 1.47 giving the public an opportunity to comment on the appropriateness of the scope change of the Code Case.

With regard to including Code Case N–508–4 in the next draft guide, NRC staff have reviewed Code Case N–508–4 and identified an issue. It was realized that when Section XI is used to govern snubber examination and testing, Footnote 1, which was later added to the Code Case, conflicts with Subsection IWF, Section XI, up to and including the 2004 Edition through 2005 Addenda. Footnote 1 directs the user to implement the ASME and OM Code for snubber examination and testing.

The OM Code was developed in order to have a separate Code for the development and maintenance of provisions for the IST of pumps and valves. In 1990, the ASME published the initial edition of the OM Code, thereby transferring responsibility for these provisions from Section XI to the OM Committee. While the use of the OM Code is an option under 10 CFR 50.55a(b)(3)(v), the examination and testing requirements for snubbers are also provided in the 2005 Addenda and earlier editions and addenda of Section XI. There is no conflict for licensees who have adopted the 2006 Addenda or later editions and addenda of Section XI. Other than expansion of the list of components that may be rotated from stock and installed on components for the purpose of testing or preventive maintenance, Revisions 3 and 4 of the Code Case are identical. Thus, Code Case N–508–4 as presently constructed would have to be conditioned that Footnote 1 would not apply when the ISI Code of record is earlier than Section XI, 2006 Addenda, and Section XI requirements are used to govern the examination and testing of snubbers.

Code case N–520–2

Comment: Tennessee Valley Authority suggested that Code Case N–520–2, "Alternative Rules for Renewal of Active or Expired N-type Certificates for Plants Not in Active Construction," be included in the final RG rather than the Code Case N–520–1 which was listed in the draft regulatory guide. Case N–520–2 is representative of the current nuclear plants for which construction is likely to be renewed.

NRC Response: The NRC declines at this time to adopt the changes in the final guide as suggested by the commenter. The objective of Code Case N–520–1 was to address situations where construction on a nuclear power plant was halted and thus interrupted ASME Code activities but the Certificate Holder maintained their certificate. Code Case N–520–1 provides guidance on what a Certificate Holder has to do to document and stamp the completed construction work that was performed. Code Case N–520–2 is different however, in that it addresses the situation where the Certificate Holder let its N-type certificates expire.

The revised Code Case would allow an organization with an expired Certificate to secure an ASME Temporary Certificate of Authorization. While the NRC recognizes that the temporary certificate would only apply in situations where the plant was kept in an appropriate state where completion could be restarted at a later date and that the temporary certificate would be issued solely for the purpose of finishing the documentation and stamping required for the construction completed prior to work being stopped, the NRC has determined that the public should have an opportunity to comment on this change before a final decision is made. Accordingly, Code Case N–520–2 and the suggestion provided by the commenter will be discussed in the next proposed rule.

The NRC notes that the wording of Code Case N–520–2 may create confusion regarding the relationship between the Authorized Nuclear Inspection Agency (ANIA) and the Authorized Nuclear Inspector (ANI). Accordingly, it is suggested that the wording of the Code Case be modified to clearly indicate that the "ANIA" is an Authorized Nuclear Inspection Agency and the ANIA employs the ANI.

Code Case N–597–2

Comment: Two commenters (comments PGE1 and NEI1) suggest that the method used to evaluate local degradation for Code Case, N–597–2, "Requirements for Analytical Evaluation of Pipe Wall Thinning, Section XI, Division 1," should be the same as that used in Code Case N–513–2, "Evaluation Criteria for Temporary Acceptance of Flaws in Moderate Energy Class 2 or 3 Piping, Section XI, Division 1." The commenters argue that the NRC has conditionally approved Code Case N–513–2 with an evaluation methodology to allow licensees to temporarily accept flaws in moderate energy Class 2 or 3 piping whereas condition (2) on Code Case N–597–2 would require NRC approval for any amount of local degradation beyond that calculated by the hoop stress equation.

The commenters believe that the N–513–2 methodology could be used for N–597–2 to eliminate the need for NRC approval in certain situations.

Response: The NRC declines the suggestion to adopt the Code Case N–513–2 methodology in Code Case N–597–2 in the final guide. It would not be appropriate to include such a significant expansion of the scope of the Code Case in the final guide without first having sought public comment. While the NRC agrees that the flaw evaluation methodology for analyzing piping degradation contained in Code Case N–513–2 could under certain circumstances be applied for a Code Case N–597–2 evaluation (*i.e.,* both Code Cases address the analytical evaluation of pipe wall thinning), the NRC disagrees with the commenters that through-wall leakage should be included in the scope of such an evaluation.

Code Case N–597 was not developed to address leakage, (*i.e.,* it is focused only on analytical evaluation of wall thinning). The temporary acceptance of through-wall leakage is governed by other Code Cases such as N–513–2. The addition of leakage as a condition to Code Case N–597 as suggested would imply that leakage could be justified on a permanent basis. In addition, Code Case N–597–2 is applicable to all ASME Code Class piping, which would include high energy piping. Code Case N–513–2 is limited to Class 2 and 3 moderate energy piping. The NRC has only approved temporary acceptance of flaws for moderate energy Class 2 or 3 piping (maximum operating temperature does not exceed 200°F (93°C) and maximum operating pressure does not exceed 275 psig (1.9 MPa). Finally, such a change would redefine the defense-in-depth concept.

Rather than performing inspections to detect flaws before structural integrity is compromised, degradation would in effect be managed after leakage is discovered. Thus, no changes have been made in the final guide as a result of the comments.

Code Case N–619, Code Case N–648–1

Comment: One commenter (number 7) requests that the NRC reconsider the conditions placed on Code Case N–619, "Alternative Requirements for Nozzle Inner Radius Inspections for Class 1 Pressurizer and Steam Generator Nozzles, Section XI, Division 1," and Code Case N–648–1, "Alternative Requirements for Inner Radius Examination of Class 1 Reactor Pressure Vessel Nozzles, Section XI, Division 1."

The commenter believes that the conditions on the two Code Cases requiring a wire standard to demonstrate the resolution capability of remote visual examination systems should be changed to the ASME 0.044 inch characters because characters have been recognized to be a better resolution standard (comment CW1). The commenter also raised a question regarding the use of Section XI Table IWB–3512–1 (comment CW2). The condition on Code Case N–619 state that licensees may perform a visual examination utilizing the allowable flaw length criteria of Table IWB–3512–1. The commenter believes it is unclear how allowable flaw lengths can be determined from Table IWB–3512–1. The commenter suggested that the same acceptance criteria approved by the NRC for Code Case N–648–1 be applied to Code Case N–619 since both Code Cases address the examination of the inner nozzle radius. Finally, the commenter believes that the condition on Code Case N–648–1 addressing the examination volume can be deleted as it describes the same volume required to be examined by the Code Case (comment CW3).

Response: The NRC declines at this time to adopt the changes in the final guide as suggested by the commenter. It would not be appropriate to adopt significant changes to visual testing resolutions standards in the final guide without first having sought public comment.

The NRC agrees that characters have been demonstrated to be a better resolution standard than the 1-mil wire standard. However, the NRC cannot at this time support modifying the criteria in the RG on these Code Cases to change to the ASME 0.044 inch characters as suggested. While the NRC staff ultimately supports the replacement of the wire resolution standard, the staff believes that the shift to characters should be part of broader changes to the visual testing provisions as related to Code Cases N–619 and N–648–1.

Visual examinations are used in certain situations as alternatives to volumetric and/or surface examination tests where it is not possible to conduct volumetric examination (*e.g.,* where there are limitations due to access or geometry) or to reduce occupational exposure in high radiation fields. Visual testing experts believe that if the camera and lighting were sufficient to resolve a 12 μm (0.0005 in.) diameter wire, then the camera system had a resolution sufficiently high for the inspection. Subsequent investigation of the effectiveness and reliability of visual examinations has shown that the wire resolution standard is not sufficient to determine the visual acuity of a remote system, (*i.e.,* there are important differences between visually detecting a wire and a crack). Research conducted at the Pacific Northwest National Laboratory (PNNL) showed that other calibration standards be adapted for visual testing such as reading charts and resolution targets. Results supporting this recommendation were published in NUREG/CR–6943, ''A Study of Remote Visual Methods to Detect Cracking in Reactor Components.''

However, as also discussed in the reports, other parameters such as crack size, lighting conditions, camera resolution, and surface conditions were assessed. The NRC concluded from the investigation that a significant fraction of the cracks that have been reported in nuclear power plant components are at the lower end of the capabilities of the visual testing equipment currently being used. Code Case N–619 addresses the examination of the nozzle inner radius of Class 1 pressurizers and steam generators.

Code Case N–648–1 provides an alternative for examining the inner radius of Class 1 reactor vessel nozzles. The NRC investigation of crack opening dimensions of service-induced cracks in nuclear components included thermal fatigue, mechanical fatigue, and stress corrosion cracks. The NRC concluded that current visual testing systems may not reliably detect a significant number of these cracks (approaching 50% under certain conditions). Research at PNNL showed that detection of these cracks under field conditions is strongly dependent on camera magnification, lighting, inspector training, and inspector vigilance.

While this research supports the use of characters in lieu of a wire standard, the research also shows that other changes are warranted to visual testing as related to these two Code Cases. The NRC believes that such significant changes to visual testing criteria should be undertaken by the ASME and industry in a coordinated manner.

With regard to comment CW2 that it is unclear how allowable flaw lengths can be determined from Table IWB–3512–1, the NRC agrees that the condition to determine allowable flaw length criteria could be improved, and public comments will be specifically sought on Code Case N–619 in the next proposed rule on this issue.

Finally, it is agreed that the condition requiring the examination of the surface between points M and N is unnecessary because Code Case N–648–1 already requires this examination. However, the NRC will have to request public comment on Code Case N–648–1 regarding this issue in the next proposed rule.

Code Cases N–655–1, N–757–1, N–759–1, N–782

Comment: Westinghouse Electric Company (comments WECRS1 and WECJAG1) identified four Code Cases used in the AP1000 design that were not included in the draft of RG 1.84. The commenter suggested that the Code Cases be included in the next revision of RG1.84, (*i.e.,* Code Case N–655–1, ''Use of SA–738, Grade B, for Metal Containment Vessels, Class MC, Section III, Division 1),'' Code Case N–757–1, ''Alternative Rules for Acceptability for Class 2 and 3 Valves, NPS 1 (DN25) and Smaller with Welded and Nonwelded End Connections other than Flanges, Section III, Division 1,'' Code Case N–759–2, ''Alternative Rules for Determining Allowable External Pressure and Compressive Stresses for Cylinders, Cones, Spheres, and Formed Heads, Section III, Division 1,'' and Code Case N–782, ''Use of Code Editions, Addenda, and Cases Section III, Division 1.''

Response: The NRC does not agree that these Code Cases should be included in the final RG. The Code Cases referenced in the comment are not currently listed in the latest AP1000 Design Control Document (DCD). In addition, public comment has not yet been sought on these Code Cases. Accordingly, the NRC will consider including Code Cases N–655–1, N–757–1, N–759–2, and N–782 in the next draft RG (DG–1230; proposed Revision 36 to RG 1.84), which is currently under development. If Westinghouse includes the above ASME Code Cases in its next revision to the AP1000 DCD, then the NRC staff will provide an evaluation of the acceptability of using these four ASME Code Cases in a supplement to its Final Safety Evaluation Report for the AP1000 design certification amendment as alternatives to the regulations under § 50.55a(a)(3).

For the reasons set forth above, the NRC declines to adopt the comment and no change was made to the RG as the result of this comment.

Code Case N–702

Comment: Two commenters (comments ASME8 and TVA2) request that Code Case N–702, ''Alternative Requirements for Boiling Water Reactor (BWR) Nozzle Inner Radius and Nozzle-to-Shell Welds, Section XI, Division 1,'' be conditionally accepted in the final RG. The NRC approved use of the Code Case with certain criteria in a Safety Evaluation of BWRVIP–108: BWR

Vessel and Internals Project, Technical Basis for the Reduction of Inspection Requirements for the Boiling Water Reactor Nozzle-to-Vessel Shell Welds and Nozzle Blend Radii," EPRI Technical Report 1003557, October 2002 (ADAMS Accession No. ML023330203). The commenters believe that these criteria provide a basis for the NRC to conditionally approve the Code Case in RG 1.147.

Response: The NRC declines at this time to adopt the changes in the final guide as suggested by the commenter. It would not be appropriate to generically adopt the alternative nozzle examination requirements without first having sought public comment on this Code Case. The NRC agrees, however, that the NRC staff's Safety Evaluation (dated December 18, 2007, ADAMS Accession No. ML073600374) provides a basis for approving Code Case N–702 in RG 1.47. Code Case N–702 will be addressed the next draft guide.

Code Case N–747

Comment: The American Society of Mechanical Engineers (comment ASME9) believes that the basis for listing Code Case N–747, "Reactor Vessel Head-to Flange Weld Examinations, Section XI, Division 1," in DG–1193 (Code Cases not approved for use) was flawed, and the Code Case should be unconditionally accepted in final Revision 16 of RG 1.147.

Response: The NRC declines at this time to adopt the changes in the final guide as suggested by the commenter. It would not be appropriate to adopt the Code Case in the final guide without first having sought public comment. Nonetheless, the NRC staff has reviewed the additional information provided by the ASME regarding the expected fluence levels of reactor vessel head-to-flange welds and believes that an adequate technical basis has been provided to support a conclusion that the fracture toughness will remain high. Code Case N–747 will be addressed in the next draft guide.

Code Case With Proposed Conditions—No Public Comments

In the proposed rule, the NRC proposed to condition Code Case N–570–1. No public comments were received on the proposed conditions to the Code Case. Thus, no changes have been made to the proposed adoption of Code Case N–570–1.

Section III

Code Case N–570–1, Alternative Rules for Linear Piping and Linear Standard Supports for Classes 1, 2, 3, and [Metal Cladding (MC)], Section III, Division 1. Code Case N–570–1 references American National Standards Institute (ANSI)/American Institute of Steel Construction (AISC) N690–1994 s1, "Supplement No. 1 to the Specification for the Design, Fabrication, and Erection of Steel Safety-Related Structures for Nuclear Facilities." However, the AISC issued Supplement 2 on October 6, 2004. Supplement 2 supersedes Supplement 1. The updated supplement (Supplement 2) is consistent with NRC positions and requirements for new reactor support design. Thus, the NRC is conditioning Code Case N–570–1 to require that ANSI/AISC N690–1994 s2, "Supplement No. 2 to the Specification for the Design, Fabrication, and Erection of Steel Safety-Related Structures for Nuclear Facilities," be used when this code case is implemented.

III. NRC Approval of New and Amended ASME Code Cases

This final rule incorporates by reference the latest revisions of the NRC RGs that list acceptable and conditionally acceptable ASME BPV Code Cases. RG 1.84, Revision 35 would supersede Revision 34 (October 2007); and RG 1.147, Revision 16 would supersede Revision 15 (October 2007). RG 1.192 (June 2003) would not be revised because there have been no new OM Code Cases published by the ASME since the last NRC review.

The ASME Code Cases which are the subject of this rulemaking are the new revised Section III and Section XI Code Cases listed in Supplements 2 through 11 to the 2004 BPV Code, and Supplement 0 published with the 2007 Edition of the BPV Code (Supplement 0 also serves as Supplement 12 to the 2004 Edition) of the code. The NRC followed a three-step process to determine acceptability of new and revised ASME Code Cases and the need for conditions on the uses of these Code Cases. This process was employed in the review of the ASME Code Cases which are the subject of this final rule. First, NRC staff actively participated with other ASME committee members with full involvement in discussions and technical debates in the development of new and revised Code Cases. This included a technical justification in support of each new or revised Code Case. Second, the NRC committee representatives distributed the Code Case and technical justification to other cognizant NRC staff to ensure an adequate technical review.

Finally, the proposed NRC position on each Code Case is reviewed and approved by NRC management as part of the rulemaking amending 10 CFR 50.55a to incorporate by reference new revisions of the RGs listing the relevant ASME Code Cases and conditions on their use. This regulatory process, when considered together with the ASME's own process for development and approval of ASME Code Cases, provides reasonable assurances that the NRC approves for use only those new and revised ASME Code Cases (with conditions as necessary) which provide reasonable assurance of adequate protection to public health and safety and which do not have significant adverse impacts on the environment.

Code Cases Approved Unconditionally for Use

The NRC concludes, in accordance with the process for review of ASME Code Cases, that each of the ASME Code Cases listed in Table 1 is technically adequate and consistent with current NRC regulations.

TABLE 1—UNCONDITIONALLY APPROVED CODE CASES

Code Case No.	Code supplement	Code case title
ASME B&PV Code, Section III		
N–4–12	4	Special Type 403 Modified Forgings or Bars, Class and CS, Section III, Division 1.
N–284–2	12	Metal Containment Shell Buckling Design Methods, Class MC, Section III, Division 1.
N–373–3	3	Alternative postweld heat treatment (PWHT) Time at Temperature for P–No. 5A or P–No. 5B Group 1 Material, Classes 1, 2, and 3 Section III, Division 1.
N–621–1	3	Ni-Cr-Mo Alloy Unified Numbering System (UNS) N06022) Weld Construction to 800°F, Section III, Division 1.

TABLE 1—UNCONDITIONALLY APPROVED CODE CASES—Continued

Code Case No.	Code supplement	Code case title
N–699	8	Use of Titanium Grade 2 (UNS R50400) Tube and Bar, and Grade 1 (UNS R50250) Plate and Sheet for Class 1 Construction, Section III, Division 1.
N–725	4	Design Stress Values for UNS N06690 With Minimum Specified Yield Strength of 35 Ksi (240 Mpa), Classes 2 and 3 Components, Section III, Division 1.
N–727	9	Dissimilar Welding Using Continuous Drive Friction Welding for Reactor Vessel Control Rod Drive Mechanism (CRDM)/Control Element Drive Mechanism (CEDM)Nozzle to Flange/Adapter Welds, Class 1, Section III, Division 1.
N–732	5	Magnetic Particle Examination of Forgings for Construction, Section III, Division 1.
N–736	8	Use UNS S32050 Welded and Seamless Pipe and Tubing, Forgings, and Plates Conforming to SA–249/SA–249M, SA–479/SA–479M, and SA–240/SA–240M, and Grade CK35MN Castings Conforming to ASTM A 743–03 for Construction of Class 1, 2, and 3 Components, Section III, Division 1.
N–738	6	NDE of Full Penetration Butt Welds in Class 2 Supports, Section III, Division 1.
N–741	7	Use of 22Cr-5Ni-3Mo-N (Alloy UNS S32205 Austenitic/Ferritic Duplex Stainless Steel) Forgings, Plate, Welded and Seamless Pipe Tubing, and Fittings to SA–182, SA–240, SA–789, A 790–04a, SA–815, Classes 2 and 3, Section III, Division 1.
N–744	11	Use of Metric Units Boiler and Pressure Vessel Code, Section III, Division 1.
N–746	8	Use of 46Fe-24Ni-21Cr-6Mo-Cu-N (UNS N08367) Bolting Materials for Class 2 and 3 Components, Section III, Division 1.
N–756	12	Alternative Rules for Acceptability for Class 1 Valves, NPS (DN 25) and Smaller with Nonwelded End Connections Other than Flanges, Section III, Division 1.
N–759	11	Alternative Rules for Determining Allowable External Pressure and Compressive Stresses for Cylinders, Cones, Spheres, and Formed Heads, Section III, Division 1.
ASME B&PV Code, Section XI		
N–494–4	7	Pipe Specific Evaluation Procedures and Acceptance Criteria for Flaws in Piping that Exceed the Acceptance Standards, Section XI, Division 1.
N–496–2	2	Helical-Coil Threaded Inserts, Section XI, Division 1.
N–666	9	Weld Overlay of Class 1, 2, and 3 Socket Welded Connections, Section XI, Division 1.
N–686–1	12	Alternative Requirements for Visual Examinations VT–1, VT–2, and VT–3, Section XI, Division 1.
N–705	11	Evaluation Criteria for Temporary Acceptance of Degradation in Moderate Energy Class 2 or 3 Vessels and Tanks, Section XI, Division 1.
N–706–1	12	Alternative Examination Requirements of Table IWB–2500–1 and Table IWC–2500–1 for Pressurized Water Reactor (PWR) Stainless Steel Residual and Regenerative Heat Exchangers, Section XI, Division 1.
N–712	2	Class 1 Socket Weld Examinations, Section XI, Division 1.
N–730	11	Roll Expansion of Class 1 Control Rod Drive Bottom Head Penetrations in Boiling Water Reactors (BWR), Section XI, Division 1.
N–731	5	Alternative Class 1 System Leakage Test Pressure Requirements, Section XI, Division 1.
N–733	6	Mitigation of Flaws in NPS 2 (DN 50) and Smaller Nozzles and Nozzle Partial Penetration Welds in Vessels and Piping by Use of a Mechanical Connection Modification, Section XI, Division 1.
N–735	11	Successive Inspection of Class 1 and 2 Piping Welds, Section XI, Division 1.
N–739	11	Alternative Qualification Requirements for Personnel Performing Class CC Concrete and Post-tensioning System Visual Examinations, Section XI, Division 1.
N–753	10	Vision Tests, Section XI, Division 1.

Code Cases Approved for Use With Conditions

As a result of the NRC staff's review, the NRC concludes that certain Code Cases are technically inadequate or require supplemental guidance. Accordingly, the NRC is imposing conditions [2] upon the use of these Code Cases, and they are listed in Table 2.

[2] The NRC reviews every Code Case to ascertain if each of the Code Cases is technically adequate and consistent with current NRC regulations. As a result of such reviews, the NRC may conclude that certain Code Cases are technically adequate or require supplemental guidance. In such cases, the NRC imposes limitations, modifications, and provisions on those Code Cases but is now substituting the word "Conditions" throughout 10 CFR 50.55a.

TABLE 2—CONDITIONALLY APPROVED CODE CASES

Code Case No.	Code supplement	Code case title	Condition
		ASME B&PV Code, Section III	
N–71–18	Revision 18 of the Code Case was not new to Draft Revision 35 of Regulatory Guide 1.84. The Code Case is listed in this table because a public comment was received suggesting editorial corrections.	*Additional Materials for Subsection NF, Class 1, 2, 3, and MC Component Supports Fabricated by Welding, Section III, Division 1.*	(1) The maximum measured ultimate tensile strength (UTS) of the component support material must not exceed 170 Ksi in view of the susceptibility of high-strength materials to brittleness and stress corrosion cracking. (2) Certain applications may exist where a UTS value of up to 190 Ksi could be considered acceptable for a material and, under this condition, the Design Specification must specify impact testing for the material. For these cases, it must be demonstrated by the applicant that: (a) The impact test results for the material meet Code requirements, (b) The material is not subject to stress corrosion cracking by virtue of the fact that: (i) A corrosive environment is not present, and (ii) The component that contains the material has essentially no residual stresses or assembly stresses, and (iii) It does not experience frequent sustained loads in service. (3) In the last sentence of paragraph 4.2, reference must be made to paragraph 4.5.2.2, "Alternative Atmosphere Exposure Time Periods Established by Test," of the AWS D1.1 Code for the evidence presented to and accepted by the Authorized Inspector concerning exposure of electrodes for longer periods of time. (4) Paragraph 15.2.2 is not acceptable as written and must be replaced with the following: "When not exempted by 15.2.1 above, the post-weld heat treatment must be performed in accordance with NF–4622 except that ASTM A–710 Grade A Material must be at least 1,000 °F (540 °C) and must not exceed 1,150 °F (620 °C) for Class 1 and Class 2 material and 1,175 °F (640 °C) for Class 3 material. (5) The new holding time at temperature for weld thickness (nominal) must be 30 minutes for ½ inch or less, 1 hour per inch for thickness over ½ inch to 5 inches, and for thicknesses over 5 inches, 5 hours plus 15 minutes for each additional inch over 5 inches. (6) The fracture toughness requirements as listed in this Code Case apply only to piping supports and not to Class 1, Class 2, and Class 3 component supports.
N–570–1	8	*Alternative Rules for Linear Piping and Linear Standard Supports for Classes 1, 2, 3, and MC, Section III, Division 1.*	The provisions of ANSI/AISC N690–1994 s2, "Supplement No. 2 to the Specification for the Design, Fabrication, and Erection of Steel of Safety-Related Structures for Nuclear Facilities," must be met.
		ASME B&PV Code, Section XI	
N–416–4	4	*Alternative Pressure Test Requirement for Welded or Brazed Repairs, Fabrication Welds or Brazed Joints for Replacement Parts and Piping Subassemblies, or Installation of Replacement Items by Welding or Brazing, Classes 1, 2, and 3, Section XI, Division 1.*	Nondestructive examination shall be performed on welded or brazed repairs and fabrication and installation joints in accordance with the methods and acceptance criteria of the applicable subsection of the 1992 Edition of Section III.
N–504–4	10	*Alternative Rules for Repair of Class 1, 2, and 3 Austenitic Stainless Steel Piping, Section XI, Division 1.*	The provisions of Section XI, Nonmandatory Appendix Q, "Weld Overlay Repair of Class 1, 2, and 3 Austenitic Stainless Steel Piping Weldments," must also be met. In addition, the following conditions shall be met: (a) The total laminar flaw area shall not exceed 10 percent of the weld surface area, and no linear dimension of the laminar flaw area shall exceed the greater of 3 inches or 10 percent of the pipe circumference; and (b) radiography shall not be used to detect planar flaws under or masked by laminar flaws.

TABLE 2—CONDITIONALLY APPROVED CODE CASES—Continued

Code Case No.	Code supplement	Code case title	Condition
N–638–4	11	*Similar and Dissimilar Metal Welding Using Ambient Temperature Machine GTAW Temper Bead Technique, Section XI, Division 1.*	Ultrasonic examination shall be demonstrated for the repaired volume using representative samples which contain construction type flaws.
N–661–1	7	*Alternative Requirements for Wall Thickness Restoration of Class 2 and 3 Carbon Steel Piping for Raw Water Service, Section XI, Division 1.*	(1) If the cause of the degradation has not been determined, the repair is only acceptable until the next refueling outage. (2) When through-wall repairs are made by welding on surfaces that are wet or exposed to water, the weld overlay repair is only acceptable until the next refueling outage.
N–751	11	*Pressure Testing of Containment Penetration Piping, Section XI, Division 1.*	When a 10 CFR Part 50, Appendix J, Type C test is performed as an alternative to the requirements of IWA–4540 (IWA–4700 in the 1989 edition through the 1995 edition) during repair and replacement activities, nondestructive examination must be performed in accordance with IWA–4540(a)(2) of the 2002 Addenda of Section XI.

ASME Code Cases Not Approved for Use

ASME Code Cases which are currently issued by the ASME but not approved for generic use by the NRC are listed in RG 1.193, *ASME Code Cases Not Approved for Use.* The Code Cases which are not approved for use include Code Cases on high-temperature gas cooled reactors; certain requirements in Section III, Division 2, that are not endorsed by the NRC; liquid metal; and submerged spent fuel waste casks. RG 1.193 is not incorporated by reference into § 50.55a. The RG is prepared by the NRC as a resource for stakeholders, allowing them to easily identify Code Cases which the NRC has not approved for use as a generic matter. Listing of a Code Case in RG 1.193 does not preclude an applicant or licensee from seeking individual, case-by-case NRC approval to use a listed Code Case.

IV. Paragraph-By Paragraph Discussion

Overall Considerations on the Use of ASME Code Cases

This final rule amends 10 CFR 50.55a to incorporate by reference RG 1.84, Revision 35, which supersedes Revision 34, and RG 1.147, Revision 16, which supersedes Revision 15. The following general guidance applies to the use of the ASME Code Cases approved in the latest versions of the regulatory guides which are incorporated by reference into 10 CFR 50.55a as part of this rulemaking.

The endorsement of a Code Case in NRC RGs constitutes acceptance of its technical position for applications which are not precluded by regulatory or other requirements or by the recommendations in these or other RGs. The applicant and licensee are responsible for ensuring that use of the Code Case does not conflict with regulatory requirements or licensee commitments. The Code Cases listed in the RGs are acceptable for use within the limits specified in the Code Case. If the RG states an NRC condition on the use of a Code Case, then the NRC condition supplements and does not supersede any condition(s) specified in the code case, unless otherwise stated in the NRC condition.

ASME Code Cases may be revised for many reasons, (*e.g.,* to incorporate operational examination and testing experience; and to update material requirements based on research results). On occasion, an inaccuracy in an equation is discovered or an examination, as practiced, is found not to be adequate to detect a newly discovered degradation mechanism. Hence, when an applicant or a licensee initially implements a Code Case, 10 CFR 50.55a requires that the applicant or the licensee implement the most recent version of that Code Case as listed in the RGs incorporated by reference. Code Cases superseded by revision are no longer acceptable for new application unless otherwise indicated.

Section III of the ASME BPV Code applies only to new designs and construction of new plants. The edition and addenda to be used in the design and/or construction of a plant are selected based on the date of the construction permit, combined license, design certification, or manufacturing license and are not changed thereafter, except voluntarily by the applicant or the licensee (unless prohibited by applicable NRC finality provisions in 10 CFR Part 52) or as otherwise permitted under 10 CFR Part 52). Hence, if a Section III Code Case is implemented by an applicant or a licensee and a later version of the Code Case is incorporated by reference into 10 CFR 50.55a and listed in the RGs, then the applicant or the licensee may use either version of the Code Case (subject, however, to whatever change requirements apply to its licensing basis, (*e.g.,* 10 CFR 50.59).

The ISI and OM IST programs for a 10 CFR Part 50 operating license or 10 CFR Part 52 combined license must be updated every 10 years to the latest edition and addenda of Section XI and the OM Code, respectively, that were incorporated by reference to 10 CFR 50.55a and in effect 12 months prior to the start of the next inspection and testing interval. Licensees who were using a Code Case prior to the effective date of its revision may continue to use the previous version for the remainder of the 120-month ISI or IST interval. This relieves licensees of the burden of having to update their ISI or IST program each time a Code Case is revised by the ASME and approved for use by the NRC. Because Code Cases apply to specific editions and addenda and because Code Cases may be revised because they are no longer accurate or adequate, licensees choosing to continue using a Code Case during the subsequent ISI interval must implement the latest version incorporated by reference into § 50.55a and listed in the RGs.

The ASME may annul Code Cases that are no longer required, are determined to be inaccurate or inadequate, or have been incorporated into the BPV or OM Codes. If an applicant or a licensee applied a Code Case before it was listed as annulled or expired, the applicant or the licensee may continue to use the Code Case until the applicant or the

licensee updates its construction Code of Record (in the case of an applicant, updates its application) or until the licensee's 120-month ISI/IST update interval expires, after which the continued use of the code case is prohibited unless NRC approval is granted under § 50.55a(a)(3). If a Code Case is incorporated by reference into § 50.55a and later annulled by the ASME because experience has shown that the design analysis, construction method, examination method, or testing method is inadequate; the NRC will amend § 50.55a and the relevant RG to remove the approval of the annulled Code Case. Applicants and licensees should not begin to implement such annulled Code Cases in advance of the effective date of the final rulemaking. Concurrent with this action, the NRC is publishing in the **Federal Register** Notices of availability of these RGs listing acceptable ASME BPV Code Cases.

Section 50.55a(b)

In paragraphs (b) and (b)(4) of § 50.55a, the reference to the revision number for RG 1.84 is changed from "Revision 34" to "Revision 35." In paragraph (b)(5) of § 50.55a, the reference to the revision number for RG 1.147 is changed from "Revision 15" to "Revision 16."

Sections 50.55a(f)(2), (f)(3)(iii)(A), (f)(3)(iv)(A), (f)(4)(ii), (g)(2), (g)(3)(i), (g)(3)(ii), (g)(4)(i), and (g)(4)(ii)

In paragraphs (f)(2), (f)(3)(iii)(A), (f)(3)(iv)(A), (f)(4)(ii), (g)(2), (g)(3)(i), (g)(3)(ii), (g)(4)(i), and (g)(4)(ii) of § 50.55a, the reference to the revision number for RG 1.147 is changed from "Revision 15" to "Revision 16."

V. Availability of Documents

The NRC is making the documents identified below available to interested persons through one or more of the following:

Public Document Room (PDR): The NRC PDR is located at 11555 Rockville Pike, Public File Area O–1F21, Rockville, Maryland 20852.

Federal Rulemaking Web Site: Public comments and supporting material related to this final rule can be found at *http://regulations.gov* by searching on the Docket ID NRC–2009–0014.

The NRC's Public Electronic Reading Room:

The NRC's public electronic reading room is located at *http://www.nrc.gov/reading-rm.html.*

TABLE 2

Document	PDR	Web	e-Reading Room
Final Rule Regulatory Analysis	X	X	ML100560131
RG 1.84, Revision 35	X	X	ML101800532
RG 1.147, Revision 16	X	X	ML101800536
RG 1.193, Revision 3	X	X	ML101800540
Public Comments	X	X	ML100670356
Safety Evaluation Report EPRI Report (BWRVIP–108) (December 18, 2007) BWR Nozzle-to-Vessel Welds and Nozzle Inner Radius.	X	X	ML073600374

VI. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law (Pub. L.) 104–113, requires Federal agencies to use technical standards developed or adopted by voluntary consensus standards bodies unless the use of such standards is inconsistent with applicable law or is otherwise impractical. In this action, the NRC is amending its regulations to incorporate by reference RGs that list ASME BPV Code Cases approved by the NRC. ASME Code Cases, which are ASME-approved alternatives to the provisions of ASME Code editions and addenda, are developed by the ASME whose members (including the NRC and utilities) have broad and varied interests. Therefore, ASME Code Cases are national consensus standards as defined in Pub. L. 104–113 and OMB Circular A–119.

The NRC reviews each Section III and Section XI Code Case published by the ASME to ascertain whether it is consistent with the safe operation of nuclear power plants. Those code cases found to be acceptable are listed in the RGs that are incorporated by reference in § 50.55a(b). Those that are found to be unacceptable are listed in RG 1.193, but licensees may still seek NRC's approval to apply these Code Cases through the relief request process permitted in § 50.55a(a)(3). Other Code Cases, which the NRC finds to be conditionally acceptable, are also listed in the RGs that are incorporated by reference along with the conditions under which they may be applied. If the NRC did not conditionally accept ASME Code Cases, it would disapprove these Code Cases entirely. The effect would be that licensees would need to submit a larger number of relief requests, which would be an unnecessary additional burden for both the licensee and the NRC. For these reasons, the treatment of ASME BPV and OM Code Cases and any conditions placed on them in this final rule does not conflict with any policy on agency use of consensus standards specified in OMB Circular A–119.

The NRC is aware of other voluntary consensus standards that exist in other countries that generally address the subjects covered by the ASME Codes and Code Cases. However, the ASME Code is itself recognized internationally. The adoption of those other voluntary consensus standards would not materially advance the underlying objectives of the NTTAA. Accordingly, the NRC is incorporating by reference and approving the use the ASME Code Cases, instead of incorporating by reference and approving the use of other countries voluntary consensus standards that address nuclear power plant piping design, construction, maintenance and in-service inspection.

VII. Finding of No Significant Environmental Impact: Environmental Assessment

This final rule action stems from the Commission's practice of incorporating by reference the RGs listing the most recent set of NRC-approved ASME Code Cases. The purpose of this action is to allow licensees to use the Code Cases listed in the RGs as alternatives to requirements in the ASME BPV Code for the construction and ISI of nuclear power plant components. This action is intended to advance the NRC's strategic goal of ensuring adequate protection of public health and safety and the environment. It also demonstrates the agency's commitment to participate in the national consensus standards process under the National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113.

The National Environmental Policy Act (NEPA) requires Federal government agencies to study the impacts of their "major Federal actions significantly affecting the quality of the human environment" and prepare detailed statements on the environmental impacts of the action and alternatives to the action (United States Code, Vol. 42, Section 4332(C) [42 U.S.C. Sec. 4332(C)]; NEPA Sec. 102(C).

The Commission has determined under NEPA, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51 that this final rule would not be a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required.

As alternatives to the ASME Code, NRC-approved Code Cases provide an adequate level of safety. Also, use of NRC-approved Code Cases does not change the probability or consequences of accidents compared to the usage of ASME Code Cases. There are also no significant, non-radiological impacts associated with this action because no changes would be made affecting non-radiological plant effluents and because no changes would be made in activities that would adversely affect the environment.

The determination of this environmental assessment is that there will be no significant offsite impact to the public from this action.

VIII. Paperwork Reduction Act Statement

This final rule increases the burden on licensees applying ASME Code Case N–730 to maintain repair records of the current control dive bottom head penetrations in BWRs for the life of the reactor vessel (10 CFR 50.55a). The public burden for the information collection associated with Code Case N–730 is estimated to average 5 hours per request. In addition, the adoption of ASME Code Cases will result in fewer relief requests, a burden hour savings of 20 hours per request. Because the burden for the information collections in this rule is insignificant, Office of Management and Budget (OMB) clearance is not required. Existing requirements were approved by OMB, approval number 3150–0011.

Send comments on any aspect of these information collections to the Information Services Branch (T–5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail to *Infocollects.Resource@NRC.gov* and to the Desk Officer, Ms. Christine Kymn, Office of Information and Regulatory Affairs, NEOB–10202 (3150–0011), Office of Management and Budget, Washington, DC 20503.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection unless the requesting document displays a currently valid OMB control number.

IX. Regulatory Analysis

The ASME Code Cases listed in the RGs to be incorporated by reference provide voluntary alternatives to the provisions in the ASME BPV Code for design, construction, and ISI of specific structures, systems, and components used in nuclear power plants. Implementation of these Code Cases is not required. Licensees use NRC-approved ASME Code Cases to reduce unnecessary regulatory burden or gain additional operational flexibility. It would be difficult for the NRC to provide these advantages independently of the ASME Code Case publication process without expending considerable additional resources.

The NRC has prepared a regulatory analysis addressing the qualitative benefits of the alternatives considered in this proposed rulemaking and comparing the costs associated with each alternative. The regulatory analysis is available to the public as indicated under the "Availability of Documents" Portion of this document.

X. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this final rule would not impose a significant economical impact on a substantial number of small entities. This final rule would affect only the licensing and operation of nuclear power plants. The companies that own these plants are not "small entities" as defined in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

XI. Backfit Analysis

The provisions in this final rule allow applicants and licensees to voluntarily use NRC-approved ASME Code Cases, sometimes with conditions. Thus, the NRC finds that this final rule does not involve any provisions that constitute backfitting as defined in 10 CFR 50.109(a)(1), or otherwise violate the issue finality provisions in 10 CFR Part 52. Accordingly, a backfit analysis has not been prepared for this rule.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

■ 1. The authority citation for Part 50 is revised to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 194 (2005). Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S. C. 5841), Section 50.10 also issued under secs. 101, 185, 68 Stat. 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(d), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

■ 2. Section 50.55a is amended by revising paragraphs (b) introductory text, (b)(4) introductory text, (b)(5) introductory text, (f)(2), (f)(3)(iii)(A), (f)(3)(iv)(A), (f)(4)(ii), (g)(2), (g)(3)(i), (g)(3)(ii), (g)(4)(i), and (g)(4)(ii) to read as follows:

§ 50.55a Codes and standards.

* * * * *

(b) Section III and XI of the ASME Boiler and Pressure Vessel Code and the ASME Code for Operation and

Maintenance of Nuclear Power Plants, which are referenced in paragraphs (b)(1), (b)(2), and (b)(3) of this section, were approved for incorporation by reference by the Director of the Office of the Federal Register pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. NRC Regulatory Guide 1.84, Revision 35, "Design, Fabrication, and Materials Code Case Acceptability, ASME Section III" (July 2010); NRC RG 1.147, Revision 16, "Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1" (July 2010); and RG 1.192, "Operation and Maintenance Code Case Acceptability, ASME OM Code" (June 2003), have been approved for incorporation by reference by the Director of the Office of the Federal Register pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. These RGs list ASME Code cases that the NRC has approved in accordance with the requirements in paragraphs (b)(4), (b)(5), and (b)(6) of this section. Copies of the ASME Boiler and Pressure Vessel Code and the ASME Code for Operation and Maintenance of Nuclear Power Plants may be purchased from the American Society of Mechanical Engineers, Three Park Avenue, New York, NY 10016. Single copies of NRC RG 1.84, Revision 35; 1.147, Revision 16; and 1.192 may be obtained free of charge by writing the Mail and Messenger Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; or by fax to 301–415–2289; or by e-mail to *Distribution.Resource@nrc.gov*. Copies of the ASME Codes and NRC RGs incorporated by reference in this section may be inspected at the NRC Technical Library, Two White Flint North, 11545 Rockville Pike, Rockville, MD 20852–2738, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

* * * * *

(4) *Design, Fabrication, and Materials Code cases.* Applicants and licensees may apply the ASME Boiler and Pressure Vessel Code cases listed in NRC RG 1.84, Revision 35 without prior NRC approval subject to the following:

* * * * *

(5) *In-service Inspection Code cases.* Licensees may apply the ASME Boiler and Pressure Vessel Code cases listed in RG 1.147, Revision 16, without prior NRC approval subject to the following:

* * * * *

(f) * * *

(2) For a boiling or pressurized water-cooled nuclear power facility whose construction permit was issued on or after January 1, 1971, but before July 1, 1974, pumps and valves which are classified as ASME Code Class 1 and Class 2 must be designed and be provided with access to enable the performance of inservice tests for operational readiness set forth in editions and addenda of Section XI of the ASME Boiler and Pressure Vessel Code incorporated by reference in paragraph (b) of this section (or the optional ASME Code cases listed in NRC RG 1.147, Revision 16 or RG 1.192 that are incorporated by reference in paragraph (b) of this section) in effect 6 months before the date of issuance of the construction permit. The pumps and valves may meet the inservice test requirements set forth in subsequent editions of this Code and addenda which are incorporated by reference in paragraph (b) of this section (or the optional ASME Code cases listed in NRC RG 1.147, Revision 16 or RG 1.192 that are incorporated by reference in paragraph (b) of this section), subject to the applicable limitations and modifications listed therein.

(3) * * *

(iii) (A) Pumps and valves, in facilities whose construction permit was issued before November 22, 1999, which are classified as ASME Code Class 1 must be designed and be provided with access to enable the performance of inservice testing of the pumps and valves for assessing operational readiness set forth in the editions and addenda of Section XI of the ASME Boiler and Pressure Vessel Code incorporated by reference in paragraph (b) of this section (or the optional ASME Code cases listed in NRC RG 1.147, Revision 16 or RG 1.192 that are incorporated by reference in paragraph (b) of this section) applied to the construction of the particular pump or valve or the Summer 1973 Addenda, whichever is later.

* * * * *

(iv)(A) Pumps and valves, in facilities whose construction permit was issued before November 22, 1999, which are classified as ASME Code Class 2 and Class 3 must be designed and be provided with access to enable the performance of inservice testing of the pumps and valves for assessing operational readiness set forth in the editions and addenda of Section XI of the ASME Boiler and Pressure Vessel Code incorporated by reference in paragraph (b) of this section (or the optional ASME Code cases listed in NRC RG 1.147, Revision 16, that are incorporated by reference in paragraph (b) of this section) applied to the construction of the particular pump or valve or the Summer 1973 Addenda, whichever is later.

* * * * *

(4) * * *

(ii) Inservice tests to verify operational readiness of pumps and valves, whose function is required for safety, conducted during successive 120-month intervals must comply with the requirements of the latest edition and addenda of the Code incorporated by reference in paragraph (b) of this section 12 months before the start of the 120-month interval (or the optional ASME Code cases listed in NRC RG 1.147, Revision 16 or RG 1.192 that are incorporated by reference in paragraph (b) of this section), subject to the conditions listed in paragraph (b) of this section.

* * * * *

(g) * *

(2) For a boiling or pressurized water-cooled nuclear power facility whose construction permit was issued on or after January 1, 1971, but before July 1, 1974, components (including supports) which are classified as ASME Code Class 1 and Class 2 must be designed and be provided with access to enable the performance of inservice examination of such components (including supports) and must meet the preservice examination requirements set forth in editions and addenda of Section XI of the ASME Boiler and Pressure Vessel Code incorporated by reference in paragraph (b) of this section (or the optional ASME Code cases listed in NRC RG 1.147, Revision 16, that are incorporated by reference in paragraph (b) of this section) in effect 6 months before the date of issuance of the construction permit. The components (including supports) may meet the requirements set forth in subsequent editions and addenda of this Code which are incorporated by reference in paragraph (b) of this section (or the optional ASME Code cases listed in NRC RG 1.147, Revision 16, that are incorporated by reference in paragraph (b) of this section), subject to the applicable limitations and modifications.

(3) * * *

(i) Components (including supports) which are classified as ASME Code Class 1 must be designed and be provided with access to enable the performance of inservice examination of these components and must meet the preservice examination requirements set forth in the editions and addenda of Section XI of the ASME Boiler and Pressure Vessel Code incorporated by reference in paragraph (b) of this section (or the optional ASME Code cases listed

in NRC RG 1.147, Revision 16, that are incorporated by reference in paragraph (b) of this section) applied to the construction of the particular component.

(ii) Components which are classified as ASME Code Class 2 and Class 3 and supports for components which are classified as ASME Code Class 1, Class 2, and Class 3 must be designed and be provided with access to enable the performance of inservice examination of these components and must meet the preservice examination requirements set forth in the editions and addenda of Section XI of the ASME Boiler and Pressure Vessel Code incorporated by reference in paragraph (b) of this section) applied to the construction of the particular component.

* * * * *

(4) * * *

(i) Inservice examination of components and system pressure tests conducted during the initial 120-month inspection interval must comply with the requirements in the latest edition and addenda of the Code incorporated by reference in paragraph (b) of this section on the date 12 months before the date of issuance of the operating license (or the optional ASME Code cases listed in NRC RG 1.147, Revision 16, that are incorporated by reference in paragraph (b) of this section), subject to the conditions listed in paragraph (b) of this section.

(ii) Inservice examination of components and system pressure tests conducted during successive 120-month inspection intervals must comply with the requirements of the latest edition and addenda of the Code incorporated by reference in paragraph (b) of this section 12 months before the start of the 120-month inspection interval (or the optional ASME Code cases listed in NRC RG 1.147, Revision 16, that are incorporated by reference in paragraph (b) of this section), subject to the conditions listed in paragraph (b) of this section.

* * * * *

Dated at Rockville, Maryland, this 14th day of September 2010.

For the Nuclear Regulatory Commission.

Cynthia D. Pederson,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–24814 Filed 10–4–10; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1069; Directorate Identifier 2009–NM–036–AD; Amendment 39–16442; AD 2010–20–08]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, and 747SR Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to all Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, and 747SR series airplanes. That AD currently requires repetitive inspections to find cracking of the web, strap, inner chords, and inner chord angle of the forward edge frame of the number 5 main entry door cutouts, and repair, if necessary. This new AD requires expanding the inspection areas to include the frame segment between stringers 16 and 23. This AD reinstates the repetitive inspections specified above for certain airplanes. This AD also requires repetitive inspections for cracking of repairs. This AD results from additional reports of cracks that have been found in the strap and inner chord of the forward edge frame of the number 5 main entry door cutouts, between stringers 16 and 23. We are issuing this AD to detect and correct such cracks. This condition, if not corrected, could cause damage to the adjacent body structure, which could result in depressurization of the airplane in flight.

DATES: This AD becomes effective November 9, 2010.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 9, 2010.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.*

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6437; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD to supersede AD 2001–16–02, amendment 39–12370 (66 FR 41440, August 8, 2001). The existing AD applies to certain Model 747 series airplanes. That NPRM was published in the **Federal Register** on November 20, 2009 (74 FR 60215). That NPRM proposed to continue to require repetitive inspections to find cracking of the web, strap, inner chords, and inner chord angle of the forward edge frame of the number 5 main entry door cutouts between stringers 23 and 31, and repair, if necessary. The NPRM also proposed to require expanding the inspection areas to include the frame segment between stringers 16 and 23; reinstating the repetitive inspections specified for certain airplanes; and adding repetitive inspections for cracking of repairs.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments that have been received on the NPRM.

Request To Exclude Large Cargo Freighters (LCFs) From the AD Applicability

Boeing requests we change the applicability in paragraph (c) of the NPRM to exclude LCFs. Boeing states that during modification into the LCF configuration, the 46-section from station 1960 to station 2360 was removed from the airplane. Boeing also states that this segment of the airplane

was replaced with a new swing-zone and 47-section.

We agree with Boeing's request for the reason provided by the commenter. We have revised paragraph (c) of this AD accordingly.

Request for Clarification of the AD Applicability

An anonymous commenter requests that we clarify the applicability of the NPRM. The commenter notes that, in accordance with paragraph (c) of the NPRM, the proposed AD would be applicable to Boeing Model 747–400F series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 747–53A2450, Revision 5, dated January 29, 2009. The commenter states that after reviewing this sentence in light of Revision 5 of the service bulletin, it was discovered that line number 1399 (*i.e.* variable number RL534) is not affected by Boeing Alert Service Bulletin 747–53A2450, Revision 5, dated January 29, 2009, and therefore is not affected by the proposed AD.

The commenter also notes that paragraph (j) of the NPRM states, "For all airplanes: Before the accumulation of 16,000 total flight cycles * * *" The commenter states that this sentence is confusing for airplane line number 1399 (i.e. variable number RL534), since this airplane is not affected by Boeing Alert Service Bulletin 747–53A2450, Revision 5, dated January 29, 2009. The commenter states that this airplane is structurally the same as the other affected airplanes, and therefore it should be affected by the NPRM.

We disagree with the commenter's remark that line number 1399 is not affected by this AD. The "Effectivity" paragraph in the Summary section of Boeing Alert Service Bulletin 747–53A2450, Revision 5, dated January 29, 2009, specifies "all 747 airplanes." Also, the Note in paragraph 1.A., "Effectivity," of Boeing Alert Service Bulletin 747–53A2450, Revision 5, dated January 29, 2009, specifies that "airplanes after line number 1397 are also affected by this service bulletin." We acknowledge there may be confusion because the Note in paragraph 1.A., "Effectivity," of Boeing Alert Service Bulletin 747–53A2450, Revision 5, dated January 29, 2009, also states that "the effectivity list shown below is complete for airplanes through line number 1397."

We find that clarification of paragraph (c) of this AD is necessary. All Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, and 747SR series airplanes (line numbers 1 through 1419 inclusive) are affected by this AD except for the airplanes mentioned in the previous comment, "Request to Exclude Large Cargo Freighters (LCF) from the Applicability." Line numbers 1420 and subsequent are not affected by the identified unsafe condition because those line numbers correspond to Model 747–8 and 747–8F series airplanes, which are still being certified and have a different configuration than the airplanes identified in this AD.

Request To Update Delegation of Authority

Boeing requests that we change Delegation Option Authorization (DOA) holder to Boeing Commercial Airplanes Organization Designation Authorization (ODA).

We agree with Boeing's request to update the delegation of authority. Boeing Commercial Airplanes has received an Organization Designation Authorization (ODA), which replaces the previous designation as a Delegation Option Authorization (DOA) holder. We have revised paragraph (o)(3) of this AD to add delegation of authority to Boeing Commercial Airplanes ODA to approve an alternative method of compliance (AMOC) for any repair required by this AD.

We also have revised paragraph (l) of this AD to delegate the authority to approve an alternative method of compliance for any repair required by this AD to the Boeing Commercial Airplanes ODA rather than a Designated Engineering Representative.

Request To Do Inspections in Accordance With the Structural Repair Manual (SRM)

Boeing requests that for any frame repaired in accordance with the SRM, the inspections also can be done in accordance with the SRM. Boeing requests that the following sentence be added to paragraph (n) of this AD: "For any frame that is repaired in accordance with the 747–400 SRM 53–60–15, Figure 201, Repair 5, do the inspection, including the threshold and intervals in accordance with the SRM."

Boeing states that the SRM was designed to add reinforcing steel straps, which will reduce the stress level in the edge frame and therefore allow an increased threshold of 20,000 flight cycles after the repair.

We do not agree with Boeing's request to do the inspections in accordance with the SRM. We have not been provided with any data to substantiate such a request, and further evaluation is needed. However, under the provisions of paragraph (o)(1) of this AD, we may consider requests for approval of an AMOC if sufficient data are submitted to substantiate that an alternative inspection plan would provide an acceptable level of safety. We have not changed the AD regarding this issue.

Request To Clarify Paragraph (i) of the NPRM

Northwest Airlines (NWA) requests that we clarify paragraph (i) of the NPRM. NWA states that it finds paragraph (i) of the NPRM to be "awkward." NWA states that paragraph (g) of the NPRM specifies to use only Boeing Alert Service Bulletin 747–53A2450, Revision 5, dated January 29, 2009, after the effective date of the AD. NWA states that paragraph (i) of the proposed NPRM directs the reader to Figure 1 of Boeing Alert Service Bulletin 747–53A2450, dated May 4, 2000; or Revision 1, dated July 6, 2000; and that Figure 1 has been deleted from Revision 5. NWA recommends that paragraph (i) of the NPRM be revised to specify: "Within 3,000 flight cycles after accomplishment of the inspections previously specified in Figure 1 of Boeing Alert Service Bulletin 747–53A2450, dated May 4, 2000, or Revision 1, dated July 6, 2000, repeat inspections at intervals not to exceed 3,000 flight cycles as specified in Table 1 of Boeing Alert Service Bulletin 747–53A2450, Revision 5, dated January 29, 2009."

We disagree with NWA's request to change paragraph (i) of this AD. For clarification, paragraph (g) of this final rule restates the inspection requirements of AD 2001–16–02, and paragraph (i) of this final rule provides the repetitive interval for those inspections. The compliance times and the repetitive inspection intervals for the inspections have not changed; therefore, using Figure 1 of the service bulletin as the reference for the compliance time is correct. We have not changed the AD in this regard.

Request To Correct Typographical Errors

All Nippon Airways (ANA) requests that certain part numbers be corrected in the NPRM. ANA notes that paragraphs (h), (i), (j), and (k) of the NPRM would require initial and repetitive inspections of the STA 2231 frame, in accordance with Boeing Alert Service Bulletin 747–53A2450, Revision 5, dated January 29, 2009. ANA states that it found several typographical errors on the code "K" in Figure 7 of this service bulletin. ANA asserts that the part number of the nut should be "BACN10JC3CD," instead of "BACB30JC3CD." ANA also states that the part number should be

"BACN10YR3CD," instead of "BACN10YR4CD." ANA states that Boeing concurs with this error and that Boeing will issue a new information notice with the correct information.

We agree with ANA's request that the part numbers referenced by the commenter should be corrected. Since the issuance of the NPRM, Boeing has issued Service Bulletin Information Notice 747–53A2450 IN 04, dated May 3, 2010, specifying the correct part numbers. We have added a new Note 3 to this AD to reference the correct part numbers.

Request To Correct Editorial Error

Boeing requests that an editorial error be corrected in paragraph (l) of the NPRM. Boeing states that the first sentence in paragraph (l) of the NPRM reads: "* * * required this AD. * * *" Boeing states that the word "by" should be inserted into the sentence to read: "* * * required by this AD. * * *"

We agree with Boeing and have corrected the editorial error. We have revised paragraph (l) of this AD in this regard.

Explanation of Change Made to This AD

We have revised this AD to identify the legal name of the manufacturer as published in the most recent type certificate data sheet for the affected airplane models.

Conclusion

We have carefully reviewed the available data, including the comments that have been received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Explanation of Changes to Costs of Compliance

Since issuance of the NPRM, we have increased the labor rate used in the Costs of Compliance from $80 per work-hour to $85 per work-hour. The Costs of Compliance information, below, reflects this increase in the specified hourly labor rate.

Costs of Compliance

There are about 163 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspections (required by AD 2001-16-02).	16	$85	None	$1,360 per inspection cycle.	163	$221,680 per inspection cycle.
Inspections (new action)	28 depending on airplane configuration.	85	None	Up to $2,380 per inspection cycle, depending on airplane configuration.	163	Up to $387,940 per inspection cycle, depending on airplane configuration.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); 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. *See* the **ADDRESSES** section for a location to examine the regulatory evaluation.

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 Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–12370 (66 FR 41440, August 8, 2001) and by adding the following new airworthiness directive (AD):

2010–20–08 The Boeing Company: Amendment 39–16442. Docket No. FAA–2009–1069; Directorate Identifier 2009–NM–036–AD.

Effective Date

(a) This AD becomes effective November 9, 2010.

Affected ADs

(b) This AD supersedes AD 2001–16–02, Amendment 39–12370.

Applicability

(c) This AD applies to The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, and 747SR series airplanes, certificated in any category, having line numbers 1 through 1419 inclusive; except for Model 747–400 series airplanes that have been modified into

the 747–400 large cargo freighter configuration.

Subject

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

Unsafe Condition

(e) This AD results from additional reports of cracks that have been found in the strap and inner chord of the forward edge frame of the number 5 main entry door cutouts, between stringers 16 and 23. Based on these reports, we have determined that the frame segment between stringers 16 and 23 is also susceptible to the unsafe condition. The Federal Aviation Administration is issuing this AD to detect and correct such cracks. This condition, if not corrected, could cause damage to the adjacent body structure, which could result in depressurization of the airplane in flight.

Compliance

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

Restatement of Requirements of AD 2001–16–02, With New Service Information

Repetitive Inspections for Frame Segment Between Stringers 23 and 31 (No Terminating Action)

(g) For airplanes having line numbers 1 through 1304 inclusive: Inspect the airplane for cracks between stringers 23 and 31 per Boeing Alert Service Bulletin 747–53A2450, Revision 2, including Appendix A, dated January 4, 2001; or Boeing Alert Service Bulletin 747–53A2450, Revision 5, dated January 29, 2009; at the later of the times specified in either paragraph (h) or (i) of this AD, per Table 1, as follows. After the effective date of this AD, use only Revision 5 of Boeing Alert Service Bulletin 747–53A2450, to accomplish the required inspection.

TABLE 1— INSPECTION REQUIREMENTS

Type of inspection	Area to inspect
(1) Detailed Visual	Strap inner chords forward and aft of the web, and exposed web adjacent to the inner chords on station 2231 frame from stringer 23 through 31 per Figure 5 or Figure 6 of the service bulletin, as applicable.
(2) Surface High Frequency Eddy Current (HFEC).	Station 2231 inner chord angles at lower main sill interface per Figure 5 or Figure 6 of the service bulletin, as applicable.
(3) Open Hole HFEC	Station 2231 frame fastener locations per Figures 4 and 7, and either Figure 5 or 6 of the service bulletin, as applicable.
(4) Surface HFEC	Around fastener locations on station 2231 inner chords from stringer 23 through 31 per Figure 5 or Figure 6 of the service bulletin, as applicable.
(5) Low Frequency Eddy Current	Station 2231 frame strap in areas covered by the reveal per Figure 5 or Figure 6 of the service bulletin, as applicable.

(h) Do the inspections specified in paragraph (g) of this AD at the applicable times specified in paragraph (h)(1) or (h)(2) of this AD. Repeat the inspections at intervals not to exceed 3,000 flight cycles.

(1) Do the inspections per Table 1 of this AD at the applicable time specified in the logic diagram in Figure 1 of Boeing Alert Service Bulletin 747–53A2450, Revision 2, including Appendix A, dated January 4, 2001. Where the compliance time in the logic diagram specifies a compliance time beginning, "from receipt of this service bulletin," this AD requires that the compliance time begin "after September 12, 2001 (the effective date of AD 2001–16–02)."

(2) After the effective date of this AD, do the inspections per Table 1 of this AD at the applicable compliance time specified in paragraph 1.E., "Compliance" of the Boeing Alert Service Bulletin 747–53A2450, Revision 5, dated January 29, 2009. Where the compliance time in Boeing Alert Service Bulletin 747–53A2450, Revision 2, including Appendix A, dated January 4, 2001, specifies a compliance time beginning, "after the date on Revision 2 of this service bulletin," this AD requires that the compliance time begin "after September 12, 2001 (the effective date of AD 2001–16–02)."

(i) Within 3,000 flight cycles after accomplishment of the inspections specified in Figure 1 of Boeing Alert Service Bulletin 747–53A2450, dated May 4, 2000; or Revision 1, dated July 6, 2000; repeat the inspections specified in paragraph (g) of this AD at intervals not to exceed 3,000 flight cycles.

Note 1: There is no terminating action currently available for the inspections required by paragraph (g) of this AD.

Note 2: Where there are differences between the AD and Boeing Alert Service Bulletin 747–53A2450, the AD prevails.

New Requirements of This AD

Additional Repetitive Inspections (For Frame Segment Between Stringers 16 and 23)

(j) For all airplanes: Before the accumulation of 16,000 total flight cycles, or within 1,500 flight cycles after the effective date of this AD, whichever occurs later, do a detailed inspection, an open hole high frequency eddy current (HFEC) inspection, a surface HFEC inspection, and a subsurface low frequency eddy current (LFEC) inspection for cracking of the forward edge frame of the number 5 main entry door cutouts, at station 2231, between stringers 16 and 23; in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2450, Revision 5, dated January 29, 2009. Repeat the inspections thereafter at intervals not to exceed 3,000 flight cycles.

Note 3: The part number of the nut for fastener code "K" in Figure 7 of Boeing Alert Service Bulletin 747–53A2450, Revision 5, dated January 29, 2009, should be "BACN10JC3CD," instead of "BACB30JC3CD." In addition, the part number of the optional nut for this fastener code should be "BACN10YR3CD," instead of "BACN10YR4CD."

Repetitive Inspections for Line Numbers 1305 and On (For Frame Segment Between Stringers 23 and 31)

(k) For airplanes having line numbers 1305 and on: Before 16,000 total flight cycles or within 1,500 flight cycles after the effective date of this AD, whichever occurs later, do a detailed inspection, an open hole HFEC inspection, a surface HFEC inspections, and a subsurface LFEC inspection for cracking of the forward edge frame of the number 5 main entry door cutouts, at station 2231, between stringers 23 and 31; in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2450, Revision 5, dated January 29, 2009. Repeat the inspections thereafter at intervals not to exceed 3,000 flight cycles.

Corrective Action

(l) If any crack is found during any inspection required by this AD, before further flight, repair the crack in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; in accordance with data meeting the type certification basis of the airplane approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings; or in accordance with Boeing Alert Service Bulletin 747–53A2450, Revision 5, dated January 29, 2009. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD. As of the effective date of this AD, repair the crack using a method approved in

accordance with the procedures specified in paragraph (o) of this AD.

Post-Repair Inspections

(m) Except as required by paragraph (n) of this AD, for airplanes on which the forward edge frame of the number 5 main entry door cutouts, at station 2231, between stringers 16 and 31, is repaired in accordance with Boeing Alert Service Bulletin 747–53A2450: Within 3,000 flight cycles after doing the repair or within 1,500 flight cycles after the effective date of this AD, whichever occurs later, do the detailed, LFEC, and HFEC inspections of the repaired area for cracks in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2450, Revision 5, dated January 29, 2009. If no cracking is found, repeat the inspections thereafter at intervals not to exceed 3,000 flight cycles. If any crack is found, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (o) of this AD. Doing the inspections specified in paragraph (m) of this AD terminates the repetitive inspections required by paragraphs (g), (h), (i), (j), and (k) of this AD for the repaired area.

(n) For any frame that is repaired in accordance with a method other than the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2450, Revision 5, dated January 29, 2009, do the inspection in accordance with a method approved in accordance with the procedures specified in paragraph (o) of this AD.

Alternative Methods of Compliance (AMOCs)

(o)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *Attn:* Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6437; fax (425) 917–6590; Or, e-mail information to *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov*.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) AMOCs approved previously in accordance with AD 2001–16–02, amendment 39–12370, are approved as AMOCs for the corresponding provisions of paragraphs (g), (h), (i), and (l) of this AD.

Material Incorporated by Reference

(p) You must use Boeing Alert Service Bulletin 747–53A2450, Revision 5, dated January 29, 2009, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, *Attention:* Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.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 September 15, 2010.

Robert D. Breneman,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–23840 Filed 10–4–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0449; Directorate Identifier 2009–SW–38–AD; Amendment 39–16456; AD 2010–20–21]

RIN 2120–AA64

Airworthiness Directives; Agusta S.p.A. (Agusta) Model A109E Helicopters

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

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for Agusta Model A109E helicopters. This AD results from a mandatory continuing airworthiness information (MCAI) AD issued by the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community. The MCAI AD states that after a report of an electrical failure, an investigation revealed inadequate functioning of the 35 amperes (Amps) battery bus (BATT BUS) circuit breaker that was not within design requirements. The actions specified in this AD are intended to replace the 35 Amps circuit breaker with a 50 Amps circuit breaker and replace the wires with oversized ones to prevent an electrical failure, loss of electrical power, and subsequent loss of control of the helicopter.

DATES: This AD becomes effective on November 9, 2010.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 9, 2010.

ADDRESSES: You may get the service information identified in this AD from Agusta, Via Giovanni Agusta, 520 21017 Cascina Costa di Samarate (VA), Italy, telephone 39 0331–229111, fax 39 0331–229605/222595, or at *http://customersupport.agusta.com/technical_advice.php.*

Examining the Docket: You may examine the docket that contains this AD, any comments, and other information 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 street address for the Docket Operations office (telephone (800) 647–5527) is stated in the **ADDRESSES** section of this AD. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: DOT/FAA Southwest Region, Mark Wiley, ASW–111, Aviation Safety Engineer, Rotorcraft Directorate, Regulations and Policy Group, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5114, fax (817) 222–5961.

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 Agusta Model A109E helicopters on April 7, 2010. That NPRM was published in the **Federal Register** on April 27, 2010 (75 FR 22043). That NPRM proposed to require modifying the fuselage electrical installation and the overhead panel electrical installation.

EASA, which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2009–0137, dated June 23, 2009, to correct an

unsafe condition for the Agusta Model A109E helicopters.

Following a report of an electrical failure, Agusta investigated the electrical power generation system and identified inadequate functioning of the 35 Amps BATT BUS circuit breaker. To prevent an electrical failure, the manufacturer has developed a BATT BUS circuit breaker modification kit for replacing the 35 Amps circuit breaker with a 50 Amps circuit breaker and replacing the wires with oversized ones. You may obtain further information by examining the MCAI AD and any related service information in the AD docket.

Comments

By publishing the NPRM, we gave the public an opportunity to participate in developing this AD. However, we received no comment on the NPRM or on our determination of the cost to the public. Therefore, based on our review and evaluation of the available data, we have determined that air safety and the public interest require adopting the AD as proposed.

Related Service Information

Agusta has issued Mandatory Bollettino Tecnico No. 109EP–98, dated June 22, 2009, that specifies modifying the BATT BUS circuit breaker installation. The service information specifies modifying the fuselage electrical installation, part number (P/N) 109–0741–49, and the overhead panel electrical installation, P/N 109–0741–55, with a BATT BUS circuit breaker modification kit, P/N 109–0824–73–101. The actions described in the MCAI AD are intended to correct the same unsafe condition as that identified in the service information.

FAA's Evaluation and Unsafe Condition Determination

This model helicopter has been approved by the aviation authority of Italy and is approved for operation in the United States Pursuant to our bilateral agreement with Italy, EASA, their Technical Agent, has notified us of the unsafe condition described in the MCAI AD. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other helicopters of the same type design.

Differences Between This AD and the MCAI AD

We refer to flight hours as hours time-in-service. Also, we do not refer to a calendar compliance date of December 31, 2009, because the effective date of this AD would be later than that date.

Costs of Compliance

We estimate that this AD will affect about 73 helicopters of U.S. registry. We also estimate that it will take about 5 work-hours per helicopter to modify the BAT BUS circuit breaker installation. The average labor rate is $85 per work-hour. Required parts will cost about $700 for the BAT BUS circuit breaker kit. Based on these figures, we estimate that the cost of this AD on U.S. operators is $82,125, assuming the entire fleet is modified.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that the regulation:

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

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

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

We prepared an economic evaluation of the estimated costs to comply with this AD. *See* the AD docket to examine the economic evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2020–20–21 Agusta S.p.A.: Amendment 39–16456; Docket No. FAA–2010–0449; Directorate Identifier 2009–SW–38–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective on November 9, 2010.

Other Affected ADs

(b) None.

Applicability

(c) This AD applies to Agusta Model A109E helicopters, all serial numbers up to and including serial number (S/N) 11758 (except S/N 11741, 11754, and 11757) modified with a circuit breaker modification kit, part number (P/N) 109–0812–04–101, –103, –107, or –109; certificated in any category.

Reason

(d) The mandatory continuing airworthiness information (MCAI) AD states after a report of an electrical failure, an investigation revealed inadequate functioning of the 35 amperes (Amps) battery bus (BATT BUS) circuit breaker.

Actions and Compliance

(e) Within 50 hours time-in-service, unless already done, modify the fuselage electrical installation, P/N 109–0741–49, and the overhead panel electrical installation, P/N 109–0741–55 with a BATT BUS circuit breaker modification kit, P/N 109–0824–73–101, as depicted in Figures 1 and 2 and by following the Compliance Instructions, paragraphs 2 through 20.7, of Agusta Mandatory Bollettino Tecnico No. 109EP–98, dated June 22, 2009.

Differences Between This AD and the MCAI AD

(f) We refer to flight hours as hours time-in-service. Also, we do not refer to a calendar compliance date of December 31, 2009, because the effective date of this AD would be later than that date.

Other Information

(g) Alternative Methods of Compliance (AMOCs): The Manager, Safety Management

Group, ATTN: DOT/FAA Southwest Region, Mark Wiley, ASW–111, Aviation Safety Engineer, Rotorcraft Directorate, Regulations and Policy Group, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5114, fax (817) 222–5961, has the authority to approve AMOCs for this AD, if requested, using the procedures found in 14 CFR 39.19.

Related Information

(h) EASA MCAI AD No. 2009–0137, dated June 23, 2009, contains related information.

Joint Aircraft System/Component (JASC) Code

(i) The JASC Code is 2460: Electrical Power Systems.

Material Incorporated by Reference

(j) You must use the specified portions of Agusta Mandatory Bollettino Tecnico No. 109EP–98, dated June 22, 2009, to do the actions required.

(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 Agusta, Via Giovanni Agusta, 520 21017 Cascina Costa di Samarate (VA), Italy, telephone 39 0331–229111, fax 39 0331–229605/222595, or at *http://customersupport.agusta.com/technical_advice.php.*

(3) You may review copies at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Fort Worth, Texas 76137; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Fort Worth, Texas, on September 22, 2010.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2010–24723 Filed 10–4–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0301; Directorate Identifier 2009–NE–22–AD; Amendment 39–16457; AD 2010–20–22]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG (RRD) Models Tay 620–15, Tay 650–15, and Tay 651–54 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

Following a review of operational data of the Tay 651–54 engine, it has been found that the actual stress levels in the Tay 651–54 engine High Pressure Compressor (HPC) stages 1, 3, 6, 7 and 12 discs were higher than those originally assumed and therefore the approved lives needed to be reduced.

We are issuing this AD to prevent HPC stages 1, 3, 6, 7, and 12 discs from exceeding the approved reduced life limits, which could result in an uncontained failure of a disc and damage to the airplane.

DATES: This AD becomes effective November 9, 2010. The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of November 9, 2010.

ADDRESSES: The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Tara Chaidez, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *tara.chaidez@faa.gov;* telephone (781) 238–7773; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on March 25, 2010 (75 FR 14379). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states that:

Following a review of operational data of the Tay 651–54 engine, it has been found that the actual stress levels in the Tay 651–54 engine High Pressure Compressor (HPC) stages 1, 3, 6, 7 and 12 discs were higher than those originally assumed and therefore the approved lives needed to be reduced.

As Tay 651–54 service run HPC discs may be installed on Tay 620–15 and Tay 650–15 engine models, it is necessary to reduce the maximum approved lives of the affected HPC disc serial numbers installed on Tay 620–15 and Tay 650–15 engines as well.

The approved lives of the affected HPC stages 1, 3, 6, 7 and 12 discs specified in this Airworthiness Directive supersede the approved lives given in the Time Limits Manuals, Chapter 05–10–01.

Exceeding of the approved life limits could potentially result in non-contained disc failure.

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.

Costs of Compliance

Based on the service information, we estimate that this AD would affect about 10 products of U.S. registry. We also estimate that it would take about 1 work-hours per product to comply with this AD. The average labor rate is $85 per work-hour. Required parts would cost about $100,000 per product. Based on these figures, we estimate the cost of the AD on U.S. operators to be $1,000,850.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this 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 this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (phone (800) 647–5527) is provided 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:

2010–20–22 Rolls-Royce Deutschland Ltd & Co KG (Formerly Rolls-Royce plc): Amendment 39–16457. Docket No. FAA–2010–0301; Directorate Identifier 2009–NE–22–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective November 9, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Rolls-Royce Deutschland Ltd & Co KG (RRD) models Tay 620–15, Tay 650–15, and Tay 651–54 turbofan engines. These engines are installed on, but not limited to, Fokker F28 Mark 0070 and Mark 0100 airplanes and Boeing 727 series airplanes.

Reason

(d) Following a review of operational data of the Tay 651–54 engine, it has been found that the actual stress levels in the Tay 651–54 engine High Pressure Compressor (HPC) stages 1, 3, 6, 7 and 12 discs were higher than those originally assumed and therefore the approved lives needed to be reduced.

We are issuing this AD to prevent HPC stages 1, 3, 6, 7, and 12 discs from exceeding the approved reduced life limits, which could result in an uncontained failure of a disc and damage to the airplane.

Actions and Compliance

(e) Unless already done, within 30 days after the effective date of this AD, amend the approved Airworthiness Limitation Section to incorporate the new, reduced life limits as follows:

For Tay 651–54 Engines

(1) The maximum approved lives (MAL) of the High Pressure Compressor (HPC) rotor discs are reduced to the MALs specified in the following Table 1 of this AD:

TABLE 1—TAY 651–54 ENGINE REDUCED DISC MAL BY PART NUMBER

For	Part No.	The MAL is
(i) HPC Stage 1 Disc	JR18049	18,800 cycles.
(ii) HPC Stage 3 Disc	JR18743	18,100 cycles.
(iii) HPC Stage 6 Disc	JR18748	19,300 cycles.
(iv) HPC Stage 7 Disc	JR17365	17,300 cycles.
(v) HPC Stage 12 Disc	JR31928	18,900 cycles.

For Tay 620–15 and Tay 650–15 Engines

(2) The MAL of certain HPC rotor discs are reduced. The affected disc serial numbers and the reduced MAL are defined in Rolls-Royce Deutschland Ltd & Co KG Alert Non-Modification Service Bulletin TAY–72–A1740, dated February 11, 2009.

(3) Thereafter, except as provided in paragraph (f) of this AD, no alternative replacement times may be approved for these parts.

Other FAA AD Provisions

(f) *Alternative Methods of Compliance (AMOCs):* The Manager, Engine Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(g) Refer to mandatory continuing airworthiness information European Aviation Safety Agency Airworthiness Directive 2009–0092, dated April 17, 2009, for related information.

(h) Contact Tara Chaidez, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *tara.chaidez@faa.gov;* telephone (781) 238–7773; fax (781) 238–7199, for more information about this AD.

Material Incorporated by Reference

(i) You must use Rolls-Royce Deutschland Ltd & Co KG Alert Non-Modification Service Bulletin TAY–72–A1740, dated February 11, 2009, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Rolls-Royce Deutschland Ltd & Co KG; Eschenweg 11, D–15827 Blankenfelde-Mahlow, Germany; telephone +49 (0) 33 7086 1768; fax +49 (0) 33 7086 3356.

(3) You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on September 24, 2010.

Francis A. Favara,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2010–24607 Filed 10–4–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0691; Directorate Identifier 2010–CE–027–AD; Amendment 39–16459; AD 2010–20–24]

RIN 2120–AA64

Airworthiness Directives; Eclipse Aerospace, Inc. Model EA500 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD requires incorporating changes to the electronic flight information system and the airplane flight manuals. This AD was prompted by reports of uncommanded changes to the communications radio frequency, altitude preselect, and/or transponder codes. We are issuing this AD to correct faulty integration of hardware and software, which could result in unannunciated, uncommanded changes in communications radio frequency, transponder codes, and altitude preselect settings. These uncommanded changes could result in loss of communication with air traffic control due to improper communications frequency, autopilot level off at the incorrect altitude, or air traffic control loss of proper tracking of the aircraft.

DATES: This AD is effective November 9, 2010.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of November 9, 2010.

ADDRESSES: For service information identified in this AD, contact Eclipse Aerospace Incorporated, 2503 Clark Carr Loop, SE., Albuquerque, New Mexico 87106; telephone: (505) 724–1200; *http://www.eclipseaerospace.net.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Eric Kinney, Aerospace Engineer, Ft. Worth Aircraft Certification Office, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone: (817) 222–5459; fax: (817) 222–5960; e-mail: *eric.kinney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to the specified products. That NPRM published in the **Federal Register** on July 9, 2010 (75 FR 39472). That NPRM proposed to require incorporating changes to the electronic flight information system and the airplane flight manual.

Comments

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

Request To Withdraw the NPRM and Issue a Special Airworthiness Information Bulletin (SAIB)

Chris Jackman, Eclipse Aerospace Incorporated, proposed the withdrawal of the NPRM and requested the FAA to issue an SAIB instead.

The commenter reasoned that the majority of the affected airplanes have already incorporated the corrective action, and the owners/operators only need to send confirmation of their taking corrective action. The commenter also states that an SAIB would be the most effective means for operators to become aware of the unsafe condition and means to communicate compliance with the service information.

The FAA disagrees with the comment. The Airworthiness Directives Manual, FAA–IR–M–8040.1C, dated May 17, 2010, prohibits the FAA from accepting assurance from a design approval holder that all products are in compliance as a reason not to issue an AD action. Consequently, we are making no change to the final rule AD action.

Request To Correct the Applicability Section

Chris Jackman requested a correction to the Applicability section, paragraph (c)(2) of the proposed AD action. He explained that the applicability in the NPRM is incorrect and should read as follows:

SNs 000039 through 000104, 000113 through 000115, 000120, and 000123 through 000124, that incorporate Avionics Upgrade to AVIO NG Configuration for ETT Configured Aircraft per any revision level of Eclipse SB 500–99–002.

The FAA agrees with the commenter's correction. This error was corrected in the NPRM; correction, published in the **Federal Register** on August 2, 2010 (75 FR 45075). The final rule AD action incorporates that correction.

Request To Add a Reference to Eclipse Aviation Recommended Service Bulletin SB 500–99–005, REV B, dated January 22, 2010

Chris Jackman commented that Eclipse Aviation Recommended Service Bulletin SB 500–99–005, REV B, dated January 22, 2010, also includes procedures for compliance with this AD and requested adding a reference to that service bulletin in addition to Eclipse Aviation Recommended Service Bulletin SB 500–99–005, REV A, dated February 16, 2009.

The FAA agrees with the commenter. We are adding a reference to Eclipse Aviation Recommended Service Bulletin SB 500–99–005, REV B, dated January 22, 2010, to the final rule AD action.

Request To Change the Contact Information for Eclipse Aerospace Incorporated

Chris Jackman stated the contact for service information has changed. The current name is Eclipse Aerospace Incorporated instead of Eclipse Aviation Corporation.

The FAA agrees with the commenter. We changed the contact information in the final rule AD action.

Request To Withdraw the Proposed AD

Gerard Wasselle stated that he and at least six other owners/pilots who have vast experience in the Eclipse Model EA500 airplane, all agree that the unsafe condition presented in the proposed AD occurs only in the AVIO NG version 1.1. We infer that the commenter would like to have the proposed AD withdrawn.

We disagree with the commenter. The root cause investigation by Eclipse Aerospace Incorporated discovered that this problem can and has occurred in Innovative Solution & Support

equipment with software versions 1.0 through 1.2. This AD is not applicable to Avidyne AVIO-equipped Model EA500 airplanes. We are not changing the final rule AD action as a result of this comment.

Request To Withdraw the Proposed AD Because of Cost

Gerard Wasselle stated the corrective action is cost prohibitive for owners of an older version of AVIO to upgrade to AVIO NG since it is more than the value of the airplane. We infer that the commenter would like to see the proposed AD withdrawn.

The FAA disagrees with the commenter. This AD action does not apply to Avidyne AVIO-equipped Model EA500 airplanes. We are not changing the final rule AD action as a result of this comment.

Conclusion

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

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

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

Costs of Compliance

We estimate that this AD affects 168 airplanes of U.S. registry.

Owners/operators will comply with this AD action by doing either of the following update options. We have no way of knowing the number of airplanes that would receive each of these upgrades.

We estimate the following costs to do the electronic flight instrument system 1.3 software update:

Labor cost	Parts cost	Total cost per airplane
2 work-hours × $85 per hour = $170	$600 to $1,500	$770 to $1,670.

We estimate the following costs to do the avionics upgrade to AVIO NG + 1.5 configuration:

Labor cost	Parts cost	Total cost per airplane
198 work-hours × $85 per hour = $16,830	$233,120	$249,950

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–20–24 Eclipse Aerospace, Inc.: Amendment 39–16459; Docket No. FAA–2010–0691; Directorate Identifier 2010–CE–027–AD.

Effective Date

(a) This AD is effective November 9, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model EA500 airplanes with the following serial numbers (SNs) that are certificated in any category:

(1) SNs 000105 through 000112, 000116 through 000119, 000121 through 000122, and 000125 through 000260;

(2) SNs 000039 through 000104, 000113 through 000115, 000120, and 000123 through 000124, that incorporate Avionics Upgrade to AVIO NG Configuration for ETT Configured Aircraft per any revision level of Eclipse SB 500–99–002; and

(3) SNs 000001 through 000038, that incorporate Performance Enhancement & Drag Reduction Modification per any revision level of Eclipse SB 500–99–001 and Avionics Upgrade to AVIO NG Configuration for ETT Configured Aircraft per any revision level of Eclipse SB 500–99–002.

Subject

(d) Air Transport Association of America (ATA) Code 23: Communications.

Unsafe Condition

(e) This AD results from reports of uncommanded changes to the communications radio frequency, altitude preselect, and/or transponder codes. We are issuing this AD to correct faulty integration of hardware and software, which could result in unannunciated, uncommanded changes in communications radio frequency, transponder codes, and altitude preselect settings. These uncommanded changes could result in loss of communication with air traffic control due to improper communications frequency, autopilot level off at the incorrect altitude, or air traffic control loss of proper tracking of the aircraft.

Compliance

(f) To address this problem, you must do the following, unless already done:

TABLE 1—ACTIONS, COMPLIANCE, AND PROCEDURES

Actions (software updates and AFM revisions)	Compliance	Procedures
(1) Incorporate one of the following set of software upgrades and AFM revisions: (i) Electronic flight instrument system (EFIS) 1.3 software update and one of the following airplane flight manual revisions: (A) Temporary Revision (TR) 010, Airplane Flight Manual part number (P/N) 06–122204 Before 3–45, Revision 01 and TR 009, Quick Reference Handbook P/N 06–122205, Revision 01; or (B) TR 010A, Airplane Flight Manual P/N 06–122204 Before 3–51, Revision 02 and TR 009A, Quick Reference Handbook P/N 06–122205, Revision 02; or (C) Airplane Flight Manual P/N 06–122204 Revision 3, dated February 3, 2010, and Quick Reference Handbook P/N 06–122205, Revision 03. (ii) Avionics upgrade to AVIO NG + 1.5 Configuration and one of the following airplane flight manual revisions: (A) Aircraft Flight Manual, P/N 06–122204, Revision 2, dated November 7, 2008, or (B) AVIO NG + 1.5 configuration and Aircraft Flight Manual, P/N 06–122204, Revision 3, dated February 10, 2010.	Incorporate within the next 6 months after November 9, 2010 (the effective date of this AD).	Follow, as appropriate, Eclipse Aviation Required Service Bulletin SB 500-31–015, REV D, dated January 14, 2009; or Eclipse Aviation Recommended Service Bulletin SB 500–99–005, REV A, dated February 16, 2009; or Eclipse Aviation Recommended Service Bulletin SB 500–99–005, REV B, dated January 22, 2010.
(2) Send the completed service bulletin compliance record required by paragraph (f)(1)(i) of this AD or paragraph (f)(1)(ii) of this AD to the address identified in paragraph (g) of this AD. The Office of Management and Budget (OMB) approved the information collection requirements contained in this regulation under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) and assigned OMB Control Number 2120–0056.	Within 30 days after you incorporate the revisions required by paragraph (f)(1)(i) of this AD or paragraph (f)(1)(ii) of this AD or within 30 days after November 9, 2010 (the effective date of this AD), whichever occurs later.	Not Applicable.

Alternative Methods of Compliance (AMOCs)

(g) The Manager, Fort Worth Airplane Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Eric Kinney, Fort Worth ACO, Aerospace Engineer, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone: (817) 222–5459; fax: (817) 222–5960. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Related Information

(h) For more information about this AD, contact Eric Kinney, Aerospace Engineer, Fort Worth ACO, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; phone: (817) 222–5459; fax: (817) 222–5960; e-mail: *eric.kinney@faa.gov.*

Material Incorporated by Reference

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

(1) The Director of the Federal Register approved the incorporation by reference of the service information contained in Table 2 of this AD under 5 U.S.C. 552(a) and 1 CFR part 51.

TABLE 2—MATERIAL INCORPORATED BY REFERENCE

Document	Revision	Date
(i) Eclipse Aviation Required Service Bulletin SB 500-31–015	REV D	January 14, 2009.
(ii) Eclipse Aviation Recommended Service Bulletin SB 500–99–005	REV B	January 22, 2010.
(iii) Eclipse Aviation Recommended Service Bulletin SB 500–99–005	REV A	February 16, 2009.

(2) For service information identified in this AD, contact Eclipse Aerospace Incorporated, 2503 Clark Carr Loop, SE., Albuquerque, New Mexico 87106; telephone: (505) 724–1200; *http://www.eclipseaerospace.net.*

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

(4) You may also review copies of the service information that is incorporated by

reference at the National Archives and Records Administration (NARA). For information on the availability of this material at an NARA facility, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Kansas City, Missouri, on September 24, 2010.

Patrick R. Mullen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–24611 Filed 10–4–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0276; Directorate Identifier 2009–NM–144–AD; Amendment 39–16452; AD 2010–20–17]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes

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

ACTION: Final rule.

SUMMARY: We are superseding an existing 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:

Three cases of in-flight loss of cabin pressurization have been reported, resulting from failure of a bulkhead check valve in combination with failure of an air supply duct.

In addition to mandating inspection, rework and/or replacement of the air supply ducts, Airworthiness Directive (AD) CF–2003–05 (subsequently revised to CF–2003–05R1) [which corresponds to FAA AD 2004–22–08] mandated the incorporation of a 4000 flight-hour repetitive inspection task for bulkhead check valves, Part Numbers (P/N) 92E20–3 and 92E20–4, into the approved maintenance schedule. However, this repetitive inspection task has since been superseded by a 3000 flight-hour periodic discard task for these bulkhead check valves.

This directive mandates revision of the approved maintenance schedule to incorporate the discard task for bulkhead check valves, P/N 92E20–3 and 92E20–4, and supersedes the instructions in Corrective Actions, Part A, of AD CF–2003–05R1, dated 7 February 2006.

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

DATES: This AD becomes effective November 9, 2010.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 9, 2010.

On December 2, 2004 (69 FR 62807, October 28, 2004), the Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD.

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: Christopher Alfano, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7340; fax (516) 794–5531.

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 5, 2010 (75 FR 17086). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Three cases of in-flight loss of cabin pressurization have been reported, resulting from failure of a bulkhead check valve in combination with failure of an air supply duct.

In addition to mandating inspection, rework and/or replacement of the air supply ducts, Airworthiness Directive (AD) CF–2003–05 (subsequently revised to CF–2003–05R1) [which corresponds to FAA AD 2004–22–08] mandated the incorporation of a 4000 flight-hour repetitive inspection task for bulkhead check valves, Part Numbers (P/N) 92E20–3 and 92E20–4, into the approved maintenance schedule. However, this repetitive inspection task has since been superseded by a 3000 flight-hour periodic discard task for these bulkhead check valves.

This directive mandates revision of the approved maintenance schedule to incorporate the discard task for bulkhead check valves, P/N 92E20–3 and 92E20–4, and supersedes the instructions in Corrective Actions, Part A, of AD CF–2003–05R1, dated 7 February 2006.

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.

Request to Provide Credit for Actions Accomplished Per Previous Issue of Service Bulletin

Air Wisconsin requests that credit be provided for actions accomplished in accordance with a previous issue of a service bulletin. Air Wisconsin states that paragraph (g)(3) of the NPRM specifies that actions accomplished in accordance with Bombardier Alert Service Bulletin A601R–21–053, dated November 8, 2001, are considered acceptable for compliance; however, paragraph (i) of the NPRM states that Bombardier Alert Service Bulletin A601R–21–053, Revision 'A,' dated January 28, 2003, needs to be accomplished. Air Wisconsin states that the NPRM should provide credit for actions accomplished in accordance with Bombardier Alert Service Bulletin A601R–21–053, dated November 8, 2001; and Revision 'A,' dated January 28, 2003. Air Wisconsin states that Revision 'A' did not affect airplanes on which actions were accomplished in accordance with the original issue of that service bulletin. Air Wisconsin states that its affected airplanes were modified in accordance with Bombardier Alert Service Bulletin A601R–21–053, dated November 8, 2001.

We agree that credit should be given for actions done in accordance with Bombardier Alert Service Bulletin A601R–21–053, dated November 8, 2001, and note that this AD does provide credit. In the "Restatement of Requirements of AD 2004–22–08, Amendment 39–13836" section of this AD, we refer to the latest revision of the service bulletin, Bombardier Alert Service Bulletin A601R–21–053, Revision 'A,' dated January 28, 2003, for accomplishing the actions specified in paragraphs (h) and (i) of this AD. In paragraph (g)(3) of this AD, we provide credit for actions done before December 2, 2004 (the effective date of AD 2004–22–08) in accordance with Bombardier Alert Service Bulletin A601R–21–053, dated November 8, 2001, with the corresponding actions in paragraphs specified in paragraphs (h) and (i) of this AD. We have not changed the AD in regard to this issue.

Request To Clarify the Requirements of Paragraph (j) of the NPRM

Comair, Inc. (Comair) notes that paragraph (j) of the NPRM proposes to revise the Airworthiness Limitations

section of the Instructions for Continued Airworthiness to include the information in Bombardier Temporary Revision (TR) 1–2–39, dated December 12, 2008, to Section 2—Systems and Powerplant Program, of Part 1 of the Bombardier CL–600–2B19 Maintenance Requirement Manual (MRM). Comair states that the MRM is not structured to incorporate Part 1 items into Part 2 of the MRM. Comair notes that Note 3 of the NPRM allows the TR to be removed once the information in TR 1–2–39 has been incorporated into a general revision. Comair notes that Revision 14, dated September 10, 2009, of the MRM has incorporated the information in TR 1–2–39.

We infer that Comair is requesting that we clarify the requirements of paragraph (j) of the NPRM. We agree that clarification is necessary. The intent of revising Part 2 of the Airworthiness Limitations section is to prohibit approval of any alternative replacement times or structural inspection intervals for this bulkhead check valve. But, we have clarified Note 3 of this AD to specify Part 2 of the Airworthiness Limitations section of the MRM. Note 3 of this AD states that the actions required by paragraph (j) of this AD may be done by inserting a copy of Bombardier TR 1–2–39, dated December 12, 2008, into the MRM, which introduces Bombardier Task 21–51–21–13. When Bombardier Task 21–51–21–13 has been included in general revisions of the MRM, the general revisions may be inserted into Part 2 of the Airworthiness Limitations section of the MRM, provided the relevant information in the general revision is identical to that in the TR.

Request To Clarify the Intent of Paragraph (j) of the NPRM

Comair states that if the intent of paragraph (j) of the NPRM is to introduce the task into its proper part of the MRM, that is, Part 1, then doing so would contradict the rationale the FAA previously provided in AD 2004–22–08, Amendment 39–13836, (69 FR 62807, October 28, 2004). In AD 2004–22–08, the FAA responded to two requests to consider the MRM Task Number 21–51–21–07 as an alternative to using Bombardier Alert Service Bulletin A601R–21–054, dated November 8, 2001. Comair points out that in AD 2004–22–08 the FAA stated, "Although Part 1 of the MRM is accepted by the FAA, it is not approved, as is Part 2 of the Airworthiness Limitations section. We cannot control revisions of the MRM; therefore, a task could be changed or deleted, and the AD requirements would be modified without our approval." Comair points out that by mandating the TR, the FAA is now requiring the documentation that it previously rejected incorporating in AD 2004–22–08.

We infer that Comair is requesting clarification of the requirements of paragraph (j) of the NPRM. While the FAA reviews and acknowledges the contents of Part 1 of the MRM, Part 1 does not require FAA approval to be changed. Consequently, the FAA cannot control revisions to this section of the MRM. However, the FAA does approve the contents of Part 2 of the MRM, which becomes legally enforceable. A task may be altered or deleted and may nullify the intent of the AD. However, operators may request approval of an AMOC to allow the use of a particular task card, provided a specified revision and date are adhered to. Any subsequent revisions would require a new AMOC request to ensure that the AD requirements are still met. We have not changed the AD in regard to this issue.

Request To Allow Continuation of Previously Issued AMOCs

Comair requests that paragraph (l)(1) of the NPRM be revised to accept previously issued AMOCs. Comair states that it has received AMOCs from the New York Aircraft Certification Office that have allowed it to perform inspections using Comair task cards for complying with MRM Task 21–51–21–07 instead of Bombardier Alert Service Bulletin A601R–21–054, dated November 8, 2001.

We agree that the previously issued AMOCs to Comair continue to meet the requirements of this AD because they incorporated the bulkhead check valve discard task that is required by paragraph (j) of this AD. While we are not accepting all previously issued AMOCs that were granted for AD 2004–22–08, we have revised paragraph (l)(1) of this AD to accept those two specific AMOCs granted to Comair.

Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this AD affects about 644 products of U.S. registry.

The actions that are required by AD 2004–22–08 and retained in this AD take about 15 work-hours per product, at an average labor rate of $85 per work hour. Required parts cost about $0 per product. Based on these figures, the estimated cost of the currently required actions is $1,869 per product.

We estimate that it takes about 1 work-hour per product to comply with the new requirement to revise the ALI. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this requirement of the AD on U.S. operators to be $54,740, or $85 per product.

We estimate that it takes about 5 work-hours per product to comply with the new inspection requirement. The average labor rate is $85 per work-hour. Required parts would cost about $594 per product, per replacement cycle. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. 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 the inspection requirements of the AD on U.S. operators to be $656,236, or $1,019 per product, per replacement cycle.

Authority for This Rulemaking

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

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

for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–13836 (69 FR 62807, October 28, 2004) and adding the following new AD:

2010–20–17 Bombardier, Inc.: Amendment 39–16452. Docket No. FAA–2010–0276; Directorate Identifier 2009–NM–144–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective November 9, 2010.

Affected ADs

(b) This AD supersedes AD 2004–22–08, Amendment 39–13836.

Applicability

(c) This AD applies to all Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, serial numbers 7003 and subsequent, certificated in any category.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (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 21: Air conditioning.

Reason

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

Three cases of in-flight loss of cabin pressurization have been reported, resulting from failure of a bulkhead check valve in combination with failure of an air supply duct.

In addition to mandating inspection, rework and/or replacement of the air supply ducts, Airworthiness Directive (AD) CF–2003–05 (subsequently revised to CF–2003–05R1) [which corresponds to FAA AD 2004–22–08] mandated the incorporation of a 4 000 flight-hour repetitive inspection task for bulkhead check valves, Part Numbers (P/N) 92E20–3 and 92E20–4, into the approved maintenance schedule. However, this repetitive inspection task has since been superseded by a 3000 flight-hour periodic discard task for these bulkhead check valves.

This directive mandates revision of the approved maintenance schedule to incorporate the discard task for bulkhead check valves, P/N 92E20–3 and 92E20–4, and supersedes the instructions in Corrective Actions, Part A, of AD CF–2003–05R1, dated 7 February 2006.

Compliance

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

Restatement of Requirements of AD 2004–22–08, Amendment 39–13836:

Service Information Clarifications

(g) Paragraphs (g)(1), (g)(2), and (g)(3) of this AD pertain to the service information referenced in this AD.

(1) Although Bombardier Alert Service Bulletin A601R–21–053, Revision 'A,' dated January 28, 2003; and Bombardier Alert Service Bulletin A601R–21–054, dated November 8, 2001; specify to submit certain information to the manufacturer, this AD does not include such a requirement.

(2) Bombardier Alert Service Bulletin A601R–21–054, dated November 8, 2001, recommends sending all damaged check valves to the manufacturer for analysis; however, this AD does not include that requirement.

(3) Accomplishment of the actions specified in Bombardier Alert Service Bulletin A601R–21–053, dated November 8, 2001, before December 2, 2004 (the effective date of AD 2004–22–08), is considered acceptable for compliance with the applicable actions specified in this AD.

Repetitive Inspections/Related Corrective Actions

(h) Within 500 flight hours after December 2, 2004: Do the detailed inspections and related corrective actions required by paragraphs (h)(1) and (h)(2) of this AD, per the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–21–053, Revision 'A,' dated January 28, 2003; and Bombardier Alert Service Bulletin A601R–21–054, dated November 8, 2001; as applicable.

(1) For airplanes having bulkhead check valves with part number (P/N) 92E20–3/–4, as identified in Bombardier Alert Service Bulletin A601R–21–054, dated November 8, 2001: Inspect the left- and right-hand bulkhead check valves for damage (cracking, breakage). If any damage is found, before further flight, replace the damaged valve. Repeat the inspection at intervals not to exceed 4,000 flight hours until the replacement required by paragraph (j) of this AD is done.

(2) For airplanes having serial numbers 7003 through 7067 inclusive, and 7069 through 7477 inclusive: Inspect the left- and right-hand air supply ducts of the rear bulkhead for damage (tearing, delamination, or cracking). If any damage is found, before further flight, either rework or replace the damaged air supply duct, which ends the inspections for that air supply duct only. If no damage is found, repeat the inspection thereafter at intervals not to exceed 500 flight hours until accomplishment of paragraph (i) of this AD.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror,

magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Terminating Action for Repetitive Inspections of Air Supply Ducts

(i) Except as required by paragraph (h)(2) of this AD, for airplanes having serial numbers 7003 through 7067 inclusive, and 7069 through 7477 inclusive: Within 5,000 flight hours after December 2, 2004, either rework or replace the left- and right-hand air ducts, as applicable, per the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–21–053, Revision 'A,' dated January 28, 2003; and Bombardier Alert Service Bulletin A601R–21–054, dated November 8, 2001; as applicable. Accomplishment of this paragraph ends the repetitive inspections required by paragraph (h)(2) of this AD.

New Requirements of This AD:

Actions and Compliance

(j) For airplanes having serial numbers 7003 and subsequent: Within 60 days after the effective date of this AD, revise the Airworthiness Limitations section of the Instructions for Continued Airworthiness to include the information in Bombardier Temporary Revision (TR) 1–2–39, dated December 12, 2008, to Section 2—Systems and Powerplant Program, of Part 1 of the Bombardier CL–600–2B19 Maintenance Requirement Manual (MRM). This task requires replacement of the bulkhead check valves having P/N 92E20–3 or 92E20–4 at intervals not to exceed 3,000 flight hours. Operate the airplane thereafter according to the limitations and procedures in the TR.

(k) Thereafter, except as provided in paragraph (j) of this AD, no alternative replacement times or structural inspection intervals may be approved for this bulkhead check valve.

Note 3: The actions required by paragraph (j) of this AD may be done by inserting a copy of Bombardier TR 1–2–39, dated December 12, 2008, into the MRM, which introduces Task 21–51–21–13. When Bombardier Task 21–51–21–13 has been included in general revisions of the MRM, the general revisions may be inserted into Part 2 of the Airworthiness Limitations section of the MRM, provided the relevant information in the general revision is identical to that in the TR.

FAA AD Differences

Note 4: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury New York 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD. Two AMOCs approved previously in accordance with AD 2004–22–08, Amendment 39–13836, are approved as AMOCs for the corresponding provisions of this AD. These two approved AMOCs are identified in paragraphs (l)(1)(i) and (l)(1)(ii) of this AD. All other AMOCs approved previously in accordance with AD 2004–22–08, Amendment 39–13836, are not approved as AMOCs with this AD.

(i) An AMOC approved by the New York ACO on November 17, 2004, in response to Comair AMOC request memo, dated November 10, 2004.

(ii) An AMOC approved by the New York ACO on October 13, 2006, in response to Comair AMOC request memo, dated September 19, 2006.

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(m) Refer to MCAI Canadian Airworthiness Directive CF–2009–31, dated July 8, 2009; and the service information specified in Table 1 of this AD for related information.

TABLE 1—RELATED INFORMATION

Document	Revision	Date
Bombardier TR 1–2–39 to Section 2—Systems and Powerplant Program, of Part 1 of the Bombardier CL–600–2B19 MRM.	Original	December 12, 2008.
Bombardier Alert Service Bulletin A601R–21–053	'A'	January 28, 2003.
Bombardier Alert Service Bulletin A601R–21–054	Original	November 8, 2001.

Material Incorporated by Reference

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

TABLE 2—MATERIAL INCORPORATED BY REFERENCE

Document	Revision	Date
Bombardier Temporary Revision (TR) 1–2–39 to Section 2—Systems and Powerplant Program, of Part 1 of the Bombardier CL–600–2B19 Maintenance Requirement Manual (MRM).	Original	December 12, 2008.
Bombardier Alert Service Bulletin A601R–21–053	'A'	January 28, 2003.
Bombardier Alert Service Bulletin A601R–21–054	Original	November 8, 2001.

(1) The Director of the Federal Register approved the incorporation by reference of Bombardier TR 1–2–39, dated December 12, 2008, to Section 2—Systems and Powerplant Program, of Part 1 of the Bombardier CL–600–2B19 MRM, under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The Director of the Federal Register previously approved the incorporation by reference of Bombardier Alert Service Bulletin A601R–21–053, Revision 'A,' dated January 28, 2003; and Bombardier Alert Service Bulletin A601R–21–054, dated November 8, 2001; on December 2, 2004 (69 FR 62807, October 28, 2004).

(3) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail

thd.crj@aero.bombardier.com; Internet *http://www.bombardier.com.*

(4) 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.

(5) 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 September 16, 2010.

Robert D. Breneman,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–24256 Filed 10–4–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0553; Directorate Identifier 2010–NM–070–AD; Amendment 39–16448; AD 2010–20–13]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Corporation Model DC–10–30, DC–10–30F, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, and MD–10–30F Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Model DC–10–30, DC–10–30F, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, and MD–10–30F airplanes. This AD requires doing a one-time inspection of the wire bundles to determine if wires touch the upper surface of the center upper auxiliary fuel tank, and marking the location if necessary; a one-time inspection for splices and damage of all wire bundles routed above the center upper auxiliary fuel tank; a one-time inspection for damage to the fuel vapor barrier seal and upper surface of the center upper auxiliary fuel tank; and corrective actions, if necessary. This AD also requires installing non-metallic barrier/shield sleeving to the wire harnesses, new clamps, new attaching hardware, and new extruded channels. This AD was prompted by fuel system reviews conducted by the manufacturer. We are issuing this AD to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

DATES: This AD is effective November 9, 2010.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of November 9, 2010.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, *Attention:* Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; e-mail *dse.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced 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.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Samuel Lee, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5262; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Model DC–10–30, DC–10–30F, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, and MD–10–30F airplanes. That NPRM was published in the **Federal Register** on June 28, 2010 (75 FR 36579). That NPRM proposed to require doing a one-time inspection of the wire bundles to determine if wires touch the upper surface of the center upper auxiliary fuel tank, and marking the location if necessary; a one-time inspection for splices and damage of all wire bundles routed above the center upper auxiliary fuel tank; a one-time inspection for damage to the fuel vapor barrier seal and upper surface of the center upper auxiliary fuel tank; and corrective actions, if necessary. That NPRM also proposed to require installing non-metallic barrier/shield sleeving to the wire harnesses, new clamps, new attaching hardware, and new extruded channels.

Comments

We gave the public the opportunity to participate in developing this AD. We have considered the comment received. FedEx supports the NPRM.

Conclusion

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

Costs of Compliance

We estimate that this AD affects 166 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

TABLE—ESTIMATED COSTS

Inspection and installation	Work hours	Average labor rate per hour	Parts	Cost per product	Number of U.S.-registered airplanes	Fleet cost
Group 1 Inspection	16	$85	$0	$1,360	75	$102,000
Group 1 Installation	200	85	13,309	30,309	75	2,273,175
Group 2 Inspection	16	85	0	1,360	58	78,880

TABLE—ESTIMATED COSTS—Continued

Inspection and installation	Work hours	Average labor rate per hour	Parts	Cost per product	Number of U.S.-registered airplanes	Fleet cost
Group 2 Installation	232	85	16,660	36,380	58	2,110,040
Group 3 Inspection	16	85	0	1,360	18	24,480
Group 3 Installation	200	85	12,258	29,258	18	526,644
Group 4 Inspection	16	85	0	1,360	15	20,400
Group 4 Installation	200	85	12,372	29,372	15	440,580

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§39.13 [Amended]

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

2010–20–13 McDonnell Douglas Corporation: Amendment 39–16448; Docket No. FAA–2010–0553; Directorate Identifier 2010–NM–070–AD.

Effective Date

(a) This AD is effective November 9, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to McDonnell Douglas Corporation Model DC–10–30, DC–10–30F, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC10–40F, and MD–10–30F airplanes, certificated in any category; as identified in Boeing Service Bulletin DC10–28–244, dated February 25, 2010.

Subject

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

Unsafe Condition

(e) This AD results from fuel system reviews conducted by the manufacturer. The Federal Aviation Administration is issuing this AD to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Compliance

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

Actions

(g) Within 60 months after the effective date of this AD do the actions specified in paragraphs (g)(1), (g)(2), (g)(3), and (g)(4) of this AD, as applicable, and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Service Bulletin DC10–28–244, dated February 25, 2010, except as required by paragraph (h) of this AD. Do all applicable corrective actions before further flight.

(1) Do a one-time general visual inspection of the wire bundles to determine if wires touch the upper surface of the center upper auxiliary fuel tank, and mark the location as applicable.

(2) Do a one-time detailed inspection for splices and damage of all wire bundles between Stations Y = 1219.000 and Y = 1381.000 between X = −40 to X = −90 (right side) and X = 15 to X = 85 (left side) above the center upper auxiliary fuel tank.

(3) Do a one-time detailed inspection for damage (burn marks) on the upper surface of the center upper auxiliary fuel tank and to the fuel vapor barrier seal.

(4) Install non-metallic barrier/shield sleeving to the wire harnesses, new clamps, new attaching hardware, and new extruded channels.

(h) Where Boeing Service Bulletin DC10–28–244, dated February 25, 2010, specifies to contact Boeing for repair instructions: Before further flight, repair the center upper auxiliary fuel tank using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Samuel Lee, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5262; fax (562) 627–5210.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization

Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane and the approval must specifically refer to this AD.

Related Information

(j) For more information about this AD, contact Samuel Lee, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5262; fax (562) 627–5210.

Material Incorporated by Reference

(k) You must use Boeing Service Bulletin DC10–28–244, dated February 25, 2010, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; e-mail *dse.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.*

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

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

Issued in Renton, Washington, on September 16, 2010.

Robert D. Breneman,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–24171 Filed 10–4–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0895]

RIN 1625–AA00

Safety Zone; Interstate 5 Bridge Repairs, Columbia River, Portland, OR

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of the Columbia River due to repairs being made to the Interstate 5 Bridge. The safety zone is necessary to ensure the safety of the workers involved as well as the maritime public and will do so by prohibiting all persons and vessels from entering or remaining in the safety zone unless authorized by the Captain of the Port or his designated representative.

DATES: This rule is effective in the CFR on October 5, 2010 through 5 p.m. on October 13, 2010. This rule is effective with actual notice for purposes of enforcement starting at 6 a.m. on October 4, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0895 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0895 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 BM2 Silvestre Suga, Waterways Management Division, Coast Guard Marine Safety Unit Portland; telephone 503–247–4015, e-mail *D13-SG-M-MSUPortlandWWM@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 to do so would be contrary to public interest since the repairs to the Interstate 5 Bridge would be completed by the time notice could be published and comments taken.

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** because to do otherwise would be contrary to the public interest since the repairs to the Interstate 5 Bridge would be completed by the time the 30 day period will have passed.

Basis and Purpose

The Oregon Department of Transportation will be conducting inspections and repairs to the Interstate 5 Bridge over the Columbia River on October 4, 5, 8, 11, 12, and 13, 2010. A tug and barge equipped with a man lift will be in position under the bridge to conduct the work. Due to the inherent dangers associated with such work, a safety zone is necessary to help ensure the safety of the workers involved as well as the maritime public.

Discussion of Rule

The safety zone created by this rule encompasses all waters of the Columbia River within the area created by connecting the following four piers of the Interstate 5 Bridge: East Pier 3 across the wide span channel to East Pier 5 then downstream under the bridge to West Pier 5, across the wide span channel to West Pier 3, then back upstream under the bridge to East Pier 3. The piers are numbered from the North bank to the South bank. Geographically this location is a rectangle enclosing the wide span channel of the Interstate 5 Bridge starting at the draw span reaching across to the first pier of the high span and then back to the draw span.

The safety zone will be in effect from 6 a.m. through 5 p.m. on October 4, 5, 8, 11, 12, and 13, 2010.

All persons and vessels are prohibited from entering or remaining in the safety zone unless authorized by the Captain of the Port or designated representative.

Regulatory Analyses

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

Regulatory Planning and Review

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

determination based on the fact that the safety zone is limited in size and duration and maritime traffic will be able to transit around the safety zone.

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 may affect the following entities some of which may be small entities: The owners and operators of vessels intending to operate in the area covered by the safety zone created in this rule. The safety zone will not have a significant economic impact on a substantial number of small entities, however, because the safety zone is limited in size and duration and maritime traffic will be able to transit around the safety zone.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves the establishment of a safety zone. 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, 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. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T13–164 to read as follows:

§ 165.T13–164 Safety Zone; Interstate 5 Bridge Repairs, Columbia River, Portland, OR.

(a) *Location.* The following area is a safety zone: All waters of the Columbia River within the area created by connecting the following four piers of the Interstate 5 Bridge: East Pier 3 across the wide span channel to East Pier 5 then downstream under the bridge to West Pier 5, across the wide span channel to West Pier 3, then back upstream under the bridge to East Pier 3. The piers are numbered from the North bank to the South bank. Geographically this location is a rectangle enclosing the wide span channel of the Interstate 5 Bridge starting at the draw span reaching across to the first pier of the high span and then back to the draw span.

(b) *Regulations.* In accordance with the general regulations in 33 CFR Part 165, Subpart C, no person may enter or remain in the safety zone created in this section or bring, cause to be brought, or allow to remain in the safety zone created in this section any vehicle, vessel, or object unless authorized by the Captain of the Port or his designated representative. Designated representatives are Coast Guard personnel authorized by the Captain of the Port to grant persons or vessels permission to enter or remain in the safety zone created by this section. See 33 CFR Part 165, Subpart C, for additional information and requirements.

(c) *Enforcement Period.* The safety zone created by this section will be enforced from 6 a.m. through 5 p.m. on October 4, 5, 8, 11, 12, and 13, 2010.

Dated: September 20, 2010.

D.E. Kaup,

Captain, U.S. Coast Guard, Captain of the Port, Columbia River.

[FR Doc. 2010–24878 Filed 10–4–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AN24

Presumptions of Service Connection for Persian Gulf Service; Correction

AGENCY: Department of Veterans Affairs.

ACTION: Correcting amendment.

SUMMARY: The Department of Veterans Affairs (VA) published in the **Federal Register** of September 29, 2010, a document amending its adjudication regulations concerning presumptive service connection for certain diseases. In the regulatory text of that document, VA inadvertently omitted a comma following the word "etiology" in the first sentence of § 3.317(a)(2)(ii). This document corrects that omission.

DATES: *Effective Date:* This correction is effective October 5, 2010.

FOR FURTHER INFORMATION CONTACT: William F. Russo, Director of Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, or call (202) 273–9515 (not a toll-free number).

SUPPLEMENTARY INFORMATION: On September 29, 2010, VA published in the **Federal Register** (75 FR 59968), an amendment to 38 CFR 3.317 to implement a decision of the Secretary of Veterans Affairs that there is a positive association between service in Southwest Asia during certain periods and the subsequent development of certain infectious diseases. In the first sentence of § 3.317(a)(2)(ii), we inadvertently omitted a comma following the word "etiology." This correction document adds the comma immediately following the word "etiology" in that sentence.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

Approved: September 30, 2010.

William F. Russo,

Director, Regulations Management, Office of the General Counsel, Department of Veterans Affairs.

■ For the reason set out in the preamble, VA is correcting 38 CFR part 3 as follows:

PART 3—ADJUDICATION

■ 1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

§ 3.317 [Corrected]

■ 2. In § 3.317, paragraph (a)(2)(ii), first sentence, add a comma immediately after the word "etiology."

[FR Doc. 2010–24898 Filed 10–4–10; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[EPA–R06–RCRA–2008–0418; SW–FRL–9209–8]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correcting amendments.

SUMMARY: On July 31, 2009, EPA published a direct final action granting a petition submitted by WRB Refining, LLC Company to exclude (or delist) the thermal desorber residual solids with Hazardous Waste Numbers: F037, F038, K048, K049, K050, and K051. In the July 31, 2009 rule, EPA inadvertently recorded the arsenic delisting level as 0.0129 mg/l. The arsenic delisting limit should be 1.29 mg/l. We are making this correction in this document.

DATES: This action is effective October 5, 2010.

FOR FURTHER INFORMATION CONTACT: Michelle Peace (214) 665–7430, or e-mail her at *peace.michelle@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA published an approval for 5,000 cubic yards of thermal desorber residual solids. The arsenic delisting exclusion limit in the direct final rule is incorrect. Therefore, in this correction notice we are correcting the arsenic value limit and correcting it in Table 1 of appendix IX to part 261—Waste Excluded Under §§ 260.20 and 260.22. Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedures are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is such good cause for making today's rule final without prior proposal and opportunity for comment because we are merely correcting the error which was included in a previous action. Thus, notice and public procedure are unnecessary.

Statutory and Executive Order Reviews

Under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), this rule is not of general applicability and therefore is not a regulatory action subject to review by the Office of Management and Budget (OMB). This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it applies to a particular facility only. Because this rule is of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), or to sections 202, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Because this rule will affect only a particular facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA. Because this rule will affect only a particular facility, this proposed 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, "Federalism," (64 FR 43255, August 10, 1999). Thus, Executive Order 13132 does not apply to this rule. Similarly, because this rule will affect only a particular facility, this proposed rule does not have tribal implications, as specified in Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000). Thus, Executive Order 13175 does not apply to this rule. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The basis for this belief is that the Agency used the DRAS program, which considers health and safety risks to infants and children, to calculate the maximum allowable concentrations for this rule. This rule is not subject to Executive Order 13211, "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. This rule does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988, "Civil Justice Reform," (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report which includes a copy of the rule to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. As stated previously, we made such a good cause finding, including the reasons therefore and established an effective date of October 5, 2010. This correction to the WRB Refining, LLC, located in Borger, TX exclusion is not a "major rule" as defined by 5 U.S.C. 804 *et seq* (2).

Lists of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: September 23, 2010.

Bill Luthans,

Acting Director, Multimedia Planning and Permitting Division.

■ For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 1. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

■ 2. In Tables 1 of Appendix IX to Part 261 revise paragraph (1) of the entry for "WRB Refining LLC" the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
* * * *	* * *	* * *
WRB Refining, LLC	Borger, TX	(1) Delisting Levels: All concentrations for those constituents must not exceed the maximum allowable concentrations in mg/l specified in this paragraph. Thermal Desorber Residual Solid Leachable Concentrations (mg/l): Antimony—0.165; Arsenic—1.29; Barium—54.8; Beryllium—0.119; Cadmium—0.139; Chromium—3.23; Chromium, Hexavalent—3.23; Cobalt—20.7; Copper—38.6; Cyanide—4.69; Lead—1.07; Mercury—0.104; Nickel—20.6; Selenium—1.0; Silver—5.0; Tin—3790.00; Vanadium—1.46; Zinc—320.0.
* * * *	* * *	* * *

[FR Doc. 2010–24925 Filed 10–4–10; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2010–0003]

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated in the table below.

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

FOR FURTHER INFORMATION CONTACT: Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *roy.e.wright@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Federal Insurance and Mitigation Administrator has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

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

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

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

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

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

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

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

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Marshall County, Illinois, and Incorporated Areas Docket Nos.: FEMA–B–1022 and FEMA–B–1068			
Illinois River	Approximately 0.57 mile downstream of Illinois Route 18	+461	City of Henry.
	Approximately 0.69 mile upstream of Illinois Route 18	+461	
Illinois River	Approximately 0.73 mile downstream of Illinois Route 17	+461	City of Lacon.
	Approximately 0.83 mile upstream of Illinois Route 17	+461	
Sandy Creek Tributary	At County Highway 14	+673	Unincorporated Areas of Marshall County.
	Approximately 140 feet northwest of the intersection of Hickory Street and South 5th Street in the City of Wenona.	+686	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected

ADDRESSES

City of Henry
Maps are available for inspection at City Hall, 426 East Park Row, Henry, IL 61537.

City of Lacon
Maps are available for inspection at City Hall, 406 5th Street, Lacon, IL 61540.

Unincorporated Areas of Marshall County
Maps are available for inspection at the Marshall County Courthouse, 122 North Prairie Street, Lacon, IL 61540.

St. John the Baptist Parish, Louisiana, and Incorporated Areas
Docket No.: FEMA–B–1041

Lake Lac Des Alemands	Entire shoreline, extending approximately 6,000 feet landward of the entire lake.	+6–7	Unincorporated Areas of St. John the Baptist Parish.
	From Texas and Pacific Railroad and continuing both east and west to the parish boundary and south to Lake Lac Des Alemands and the southern parish boundary (includes two small areas north of the railroad).	+3–6	
Lake Maurepas	Along the shoreline of Lake Maurepas, starting at the parish boundary and continuing along the coastline east to Lake Pontchartrain, extending landward approximately 2,000 feet.	+9–12	Unincorporated Areas of St. John the Baptist Parish.
	An area extending west from I–55 North, following the shoreline of Lake Maurepas to the parish boundary, extending south to approximately U.S. Route 61.	+3–13	
Lake Pontchartrain	An area extending east from I–55 North to the western coast of Lake Pontchartrain, extending north from I–10 to the parish boundary along I–55 North.	+10–13	Unincorporated Areas of St. John the Baptist Parish.
	Along the shoreline of Lake Pontchartrain, from the northern peninsula south to I–10, extending landward approximately 6,000 feet.	+12–17	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of St. John the Baptist Parish
Maps are available for inspection at 1801 West Airline Highway, La Place, LA 70068.

St. Martin Parish, Louisiana, and Incorporated Areas
Docket No.: FEMA–B–1040

Bayou Peyronnet	Approximately 2.08 miles upstream of the confluence with Bayou Berard.	+13	Unincorporated Areas of St. Martin Parish.
	Approximately 2.27 miles upstream of the confluence with Bayou Berard.	+13	
Bayou Teche	Approximately 1,900 feet upstream of Smede Highway	+15	Unincorporated Areas of St. Martin Parish.
	Approximately 2.08 miles upstream of Bridge Street	+21	
WABPL Borrow Pit (below Henderson).	Approximately 2,500 feet upstream of the confluence with Berard Canal.	+12	Unincorporated Areas of St. Martin Parish.
	Approximately 4,500 feet upstream of the confluence with Berard Canal.	+12	
WABPL Borrow Pit (above Henderson).	Approximately 1,000 feet downstream of Potato Shed Road.	+16	Unincorporated Areas of St. Martin Parish.
	Approximately 1.25 mile upstream of Potato Shed Road	+17	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of St. Martin Parish
Maps are available for inspection at 303 West Port Street, St. Martinsville, LA 70582.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Colfax County, New Mexico, and Incorporated Areas Docket No.: FEMA–B–1065			
Ranton Creek	Approximately 450 feet downstream of Kiowa Avenue	+6541	Unincorporated Areas of Colfax County.
	Approximately 150 feet downstream of Kiowa Avenue	+6547	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Colfax County

Maps are available for inspection at the Colfax County Floodplain Manager's Office, 116 South 3rd Street, Raton, NM 87740.

Atascosa County, Texas, and Incorporated Areas Docket No.: FEMA–B–1074			
Rutledge Hollow Creek	Just upstream of Roys Drive	+440	Unincorporated Areas of Atascosa County.
	Approximately 500 feet upstream of Roys Drive	+442	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Atascosa County

Maps are available for inspection at Circle Drive 41, Jourdanton, TX 78026.

Uvalde County, Texas, and Incorporated Areas Docket No.: FEMA–B–1066			
Cooks Slough	From Cooks Slough to just upstream of U.S. Route 83	+893	Unincorporated Areas of Uvalde County.
	From Cooks Slough to approximately 0.7 mile upstream of U.S. Route 83.	+895	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Uvalde County

Maps are available for inspection at 100 North Getty Street, Uvalde, TX 78801.

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

Dated: September 17, 2010.

Sandra K. Knight,

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

[FR Doc. 2010–24867 Filed 10–4–10; 8:45 am]

BILLING CODE 9110–12–P

Proposed Rules

Federal Register
Vol. 75, No. 192
Tuesday, October 5, 2010

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 429

[Docket No. EERE–2010–BT–CE–0014]

RIN 1904–AC24

Energy Conservation Program: Certification, Compliance, and Enforcement for Consumer Products and Commercial and Industrial Equipment

Correction

In proposed rule document 2010–22353 beginning on page 56796 in the issue of Thursday, September 16, 2010 make the following correction:

§429.9 [Corrected]

On page 56816, in §429.9(c), in the first column, §429.9(c)(9) through (10) is being printed in its entirety:

(9)(i) For each basic model of direct heating equipment (not including furnaces) a sample of sufficient size shall be tested to insure that–

(A) Any represented value of estimated annual operating cost, energy consumption or other measure of energy consumption of a basic model for which consumers would favor lower values shall be no less than the higher of:

(*1*) The mean of the sample, or

(*2*) The upper 97½ percent confidence limit of the true mean divided by 1.05, and

(B) Any represented value of the fuel utilization efficiency or other measure of energy consumption of a basic model for which consumers would favor higher values shall be no greater than the lower of:

(*1*) The mean of the sample or

(*2*) The lower 97½ percent confidence limit of the true mean divided by 0.95.

(ii) In calculating the measures of energy consumption for each unit tested, use the design heating requirement corresponding to the mean of the capacities of the units of the sample.

(10) For each basic model of conventional cooking tops, conventional ovens and microwave ovens a sample of sufficient size shall be tested to insure that–

(i) Any represented value of estimated annual operating cost, energy consumption or other measure of energy consumption of a basic model for which consumers would favor lower values shall be no less than the higher of:

(A) The mean of the sample, or

(B) The upper 97½ percent confidence limit of the true mean divided by 1.05, and

(ii) Any represented value of the energy factor or other measure of energy consumption of a basic model for which consumers would favor higher values shall be no greater than the lower of:

(A) The mean of the sample, or

(B) The lower 97½ percent confidence limit of the true mean divided by 0.95.

[FR Doc. C1–2010–22353 Filed 10–4–10; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0994; Directorate Identifier 2009–NE–39–AD]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

There have been several findings of cracking at the firtrees of LP Turbine discs. Fatigue crack initiation and subsequent crack propagation at the firtree may result in multiple LP Turbine blade release. The latter may potentially be beyond the containment capabilities of the engine casings. Thus, cracking at the firtrees of LP Turbine discs constitutes a potentially unsafe condition.

We are proposing this AD to detect cracks in the low-pressure turbine stage 1, 2, and 3 discs, which could result in an uncontained release of LP turbine blades and damage to the airplane.

DATES: We must receive comments on this proposed AD by November 19, 2010.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Contact Rolls-Royce plc., P.O. Box 31, Derby, DE24 8BJ, United Kingdom; Telephone: 011 44 1332 242424, Fax: 011 44 1332 249936; *e-mail: tech.help@rolls-royce.com* for the service information identified in this proposed AD or download the publication from *https://www.aeromanager.com/.*

Examining the AD Docket

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

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

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–2010–0994; Directorate Identifier 2009–NE–39–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2009–0244, dated November 9, 2009 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> There have been several findings of cracking at the firtrees of LP Turbine discs. Fatigue crack initiation and subsequent crack propagation at the firtree may result in multiple LP Turbine blade release. The latter may potentially be beyond the containment capabilities of the engine casings. Thus, cracking at the firtrees of LP Turbine discs constitutes a potentially unsafe condition.
>
> Therefore this Airworthiness Directive requires a change to the inspection intervals of LP Turbine Discs.

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

Relevant Service Information

Rolls-Royce plc has issued Alert Service Bulletin (ASB) RB.211–72–AG272, dated August 5, 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 90 products of U.S. registry. We also estimate that it would take about 30 work-hours per product to comply with this proposed AD. The average labor rate is $85 per work-hour. No parts are required. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $229,500.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Rolls-Royce plc: Docket No. FAA–2010–0994; Directorate Identifier 2009–NE–39–AD.

Comments Due Date

(a) We must receive comments by November 19, 2010.

Affected Airworthiness Directives (ADs)

(b) None.

Applicability

(c) This AD applies to Rolls-Royce plc RB211–535E4–37, –535E4–B–37, –535E4–B–75, and –535E4–C–37 turbofan engines. These engines are installed on, but not limited to, Boeing 757–200 series, –200PF series, –200CB series, and –300 series airplanes and Tupolev Tu204 series airplanes.

Reason

(d) This AD results from several findings of cracking at the firtrees of low-pressure (LP) turbine discs. Fatigue crack initiation and subsequent crack propagation at the firtree may result in multiple LP turbine blade release. We are issuing this AD to detect cracks in the LP turbine stage 1, 2, and 3 discs, which could result in an uncontained release of LP turbine blades and damage to the airplane.

Actions and Compliance

(e) Unless already done, do the following actions.

Initial Inspection Requirements

(1) At the next engine shop visit after the effective date of this AD, perform a visual and a fluorescent penetrant inspection (FPI) of the LP turbine stage 1, 2, and 3 disc. You can find guidance on the visual and FPI in Section 3, Accomplishment Instructions, of

Rolls-Royce Alert Service Bulletin (ASB) No. RB.211 72–AG272.

Repeat Inspection Requirements

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

Remove Cracked Discs

(3) If you find cracks, remove the disc from service.

Definitions

(f) For the purpose of this AD, an "engine shop visit" is the induction of an engine into the shop for maintenance involving the separation of pairs of major mating engine flanges, except that the separation of engine flanges solely for the purposes of transportation without subsequent engine maintenance does not constitute an engine shop visit.

FAA AD Differences

(g) This AD differs from the Mandatory Continuing Airworthiness Information (MCAI) and or service information as follows in that while the MCAI compliance requires action at a current shop visit, this AD requires compliance at the next shop visit after the effective date of this AD.

Other FAA AD Provisions

(h) *Alternative Methods of Compliance (AMOCs):* The Manager, Engine Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(i) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2009–0244, dated November 9, 2009, and Rolls-Royce plc ASB No. RB.211–72–AG272 for related information. Contact Rolls-Royce plc., P.O. Box 31, Derby, DE24 8BJ, United Kingdom; phone: 011 44 1332 242424, fax: 011 44 1332 249936; e-mail: *tech.help@rolls-royce.com,* for a copy of this service information or download the publication from *https://www.aeromanager.com.*

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

Issued in Burlington, Massachusetts, on September 27, 2010.

Peter A. White,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2010–24887 Filed 10–4–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0993; Directorate Identifier 2010–NE–08–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc RB211–524 Series, –535 Series, RB211 Trent 700 Series, and RB211 Trent 800 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

Cracking has been found on the inner wall between intermediate dilution chutes on a total of five front combustion liners of the standard corresponding to Rolls-Royce RB211 Service Bulletin No. 72–D133. The lives of two of these liners were confirmed to be below the currently valid borescope inspection interval. Ultimately, crack propagation could result in hot gas breakout with potential of downstream component distress and multiple turbine blade release beyond containment capabilities of the engine casings. Thus, cracking of this nature constitutes a potentially unsafe condition.

Since Rolls-Royce Service Bulletin No. 72–E902 introduces further developments of Rolls-Royce RB211 Service Bulletin No. 72–D133, engines incorporating Rolls-Royce RB211 Service Bulletin No. 72–E902 are also considered to be potentially affected and are therefore included in the applicability of this AD.

We are proposing this AD to detect cracks in the front combustion liner, which could result in hot section distress, uncontained multiple blade release and possible damage to the aircraft.

DATES: We must receive comments on this proposed AD by November 19, 2010.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Contact Rolls-Royce plc, P.O. Box 31, Derby, DE24 8BJ, United Kingdom; telephone: 011–44–1332–242424; fax: 011–44–1332–249936 for the service information identified in this proposed AD.

Examining the AD Docket

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

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

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–2010–0993; Directorate Identifier 2010–NE–08–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.).

You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2009–0243R1, dated November 26, 2009 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> Cracking has been found on the inner wall between intermediate dilution chutes on a total of five front combustion liners of the standard corresponding to Rolls-Royce RB211 Service Bulletin No. 72–D133. The lives of two of these liners were confirmed to be below the currently valid borescope inspection interval. Ultimately, crack propagation could result in hot gas breakout with potential of downstream component distress and multiple turbine blade release beyond containment capabilities of the engine casings. Thus, cracking of this nature constitutes a potentially unsafe condition.
>
> Since Rolls-Royce Service Bulletin No. 72–E902 introduces further developments of Rolls-Royce RB211 Service Bulletin No. 72–D133, engines incorporating Rolls-Royce RB211 Service Bulletin No. 72–E902 are also considered to be potentially affected and are therefore included in the applicability of this AD.
>
> This AD requires a change to the initial and repeat borescope inspection intervals for the front combustion liner.

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

Relevant Service Information

Rolls-Royce plc has issued Alert Service Bulletin RB.211–72–AF458, Revision 4, dated March 9, 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 239 products of U.S. registry. We also estimate that it would take about 1.5 work-hours per product to comply with this proposed AD. The average labor rate is $85 per work-hour. No parts are required so parts would cost about $0 per product. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $30,473.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Rolls-Royce plc: Docket No. FAA–2010–0993; Directorate Identifier 2010–NE–08–AD.

Comments Due Date

(a) We must receive comments by November 19, 2010.

Affected Airworthiness Directives (ADs)

(b) None.

Applicability

(c) This AD applies to Rolls-Royce (RR) engine models RB211–524G2–T–19, RB211–524G3–T–19, RB211–524H2–T–19, RB211–524H–T–36, RB211–535E4–37, RB211–535E4–B–37, RB211–535E4–C–37, RB211–535E4–B–75, RB211 Trent 768–60, RB211 Trent 772–60, RB211 Trent 772B–60, RB211–Trent 892–17, RB211–Trent 884–17, RB211–Trent 884B–17, RB211–Trent 877–17, RB211–Trent 875–17, RB211–Trent 892–17, RB211–Trent 892B–17 and RB211–Trent 895–17 engines, that incorporate RR Service Bulletins (SBs) RB.211–72–D133 or RB.211–72–E902. These engines are installed on, but not limited to Airbus A330 series airplanes; Boeing 747–400 series, 757 series, 767 series, and 777 series airplanes; and Tupolev Tu204 series airplanes.

Reason

(d) This AD results from:

Cracking has been found on the inner wall between intermediate dilution chutes on a total of five front combustion liners of the standard corresponding to Rolls-Royce RB211 Service Bulletin No. 72–D133. The lives of two of these liners were confirmed to be below the currently valid borescope inspection interval. Ultimately, crack propagation could result in hot gas breakout with potential of downstream component distress and multiple turbine blade release beyond containment capabilities of the engine casings. Thus, cracking of this nature constitutes a potentially unsafe condition.

Since Rolls-Royce Service Bulletin No. 72–E902 introduces further developments of Rolls-Royce RB211 Service Bulletin No. 72–D133, engines incorporating Rolls-Royce RB211 Service Bulletin No. 72–E902 are also considered to be potentially affected and are

therefore included in the applicability of this AD.

We are issuing this AD to detect cracks in the front combustion liner, which could result in hot section distress, uncontained multiple blade release and possible damage to the aircraft.

Actions and Compliance

(e) Unless already done, do the following actions.

Inspection

(f) Perform a borescope inspection as specified in section 3. Accomplishment instructions, subsection A. Borescope Inspection of Rolls-Royce RB211 Alert Service Bulletin (ASB) RB.211–72–AF458 Revision 4, dated March 9, 2009, before the limits specified below:

Initial Inspection

(1) If the engine has a combustion liner installed with:

(i) A LIFE on the effective date of this AD, that is equal to or greater than the initial inspection threshold specified in column (b) in Table 1 of this AD, or

(ii) A LIFE on the effective date of this AD, that is not known, carry out the action specified in paragraph (f) of this AD within 250 cycles after the effective date of this AD.

(iii) A LIFE on the effective date of this AD, that is less than the initial inspection threshold specified in column (b) of Table 1 of this AD, perform the borescope inspection before the LIFE exceeds the limit specified in column (c) of Table 1 of this AD.

Repeat Inspection

(2) Thereafter, repeat the borescope inspection at intervals not to exceed the cycles specified in column (d) of Table 1 or this AD.

TABLE 1—INITIAL INSPECTION THRESHOLDS AND LIMITS

Column (a)	Column (b)	Column (c)	Column (d)
Engine Model	Initial inspection threshold	Initial inspection limit if LIFE is less than the initial inspection threshold	Repeat inspection interval
(i) RB211–524G2–T–19, 524G3–T–19 and 524H2–T–19	1,150 cycles	1,400 cycles	1,400 cycles.
(ii) RB211–524H–T–36	550 cycles	800 cycles	800 cycles.
(iii) RB211–535E4–37, E4–B–37 and E4–C–37	550 cycles	800 cycles	800 cycles.
(iv) RB211–535E4–B–75	550 cycles	800 cycles	800 cycles.
(v) RB211–Trent 768–60, 772–60 and 772B–60	1,250 cycles	1,500 cycles	1,500 cycles.
(vi) RB211–Trent 892–17, RB211–Trent 884–17, RB211–Trent 884B–17, RB211–Trent 877–17, RB211–Trent 875–17, RB211–Trent 892B–17 and RB211–Trent 895–17 engines.	750 cycles	1,000 cycles	1,000 cycles.

Definitions

(g) This AD defines LIFE as the lowest of:

(1) The number of cycles-since-new of the combustion liner, or

(2) The number of cycles-in-service (CIS) since replacement of the inner wall, or

(3) The number of CIS since the combustion liner was last inspected in accordance with section 3. Accomplishment instructions, subsection A. Borescope Inspection of Rolls-Royce RB211 Series Propulsion System Series Non-Modification Service Bulletin No. RB.211–72–AF458 Revision 2, dated December 21, 2007.

FAA AD Differences

(h) This AD differs from the Mandatory Continuing Airworthiness Information (MCAI) and or service information in that the MCAI AD applies to the RB211 Trent 772C–60 engine, which isn't type certificated in the United States.

Other FAA AD Provisions

(i) *Alternative Methods of Compliance (AMOCs):* The Manager, Engine Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(j) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2009–0243R1, dated November 26, 2009, and Rolls-Royce ASB RB.211–72–AF458, Revision 4, dated March 9, 2009, for related information. Contact Rolls-Royce plc, P.O. Box 31, Derby, DE24 8BJ, United Kingdom; telephone: 011–44–1332–242424; fax: 011–44–1332–249936, for a copy of this service information.

(k) Contact Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *ian.dargin@faa.gov;* telephone (781) 238–7178; fax (781) 238–7199, for more information about this AD.

Issued in Burlington, Massachusetts, on September 27, 2010.

Peter A. White,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2010–24888 Filed 10–4–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 260

[Docket No. RM07–9–003]

Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines

September 24, 2010.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Proposed Rulemaking; notice providing for reply comments.

SUMMARY: On June 17, 2010, the Commission issued a Notice of Proposed Rulemaking proposing to revise certain financial reporting forms required to be filed by natural gas companies (FERC Form Nos. 2, 2–A, and 3–Q). The Commission is providing interested parties an opportunity to file reply comments on the Notice of Proposed Rulemaking.

DATES: Reply comments are due October 25, 2010.

ADDRESSES: You may submit reply comments, identified by Docket No. RM07–9–003, by any of the following methods:

- *Agency Web Site: http://www.ferc.gov.* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.
- *Mail/Hand Delivery:* Commenters unable to file comments electronically must mail or hand deliver an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Brian Holmes (Technical Information), Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, *Telephone:* (202) 502–6008, *E-mail: brian.holmes@ferc.gov.*

Robert Sheldon (Technical Information), Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street, NE.,

Washington, DC 20426, *Telephone:* (202) 502–8672, *E-mail: robert.sheldon@ferc.gov.*

Gary D. Cohen (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, *Telephone:* (202) 502–8321, *E-mail: gary.cohen@ferc.gov.*

Notice Regarding Reply Comments

On June 17, 2010, the Commission issued a Notice of Proposed Rulemaking (NOPR) (75 FR 35700) in the above-referenced proceeding [1] proposing to revise certain financial reporting forms required by natural gas companies (FERC Form Nos. 2, 2–A and 3–Q). Initial comments on this NOPR were due on August 23, 2010. The Commission is providing interested parties with an opportunity to file reply comments on the NOPR.

By this notice, reply comments should be filed on or before October 25, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–24943 Filed 10–4–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

[SATS No. MT–031–FOR; Docket ID OSM–2010–0010]

Montana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing receipt of a proposed amendment to the Montana regulatory program (hereinafter, the "Montana program") under the Surface Mining Control and Reclamation Act of 1977 ("SMCRA" or "the Act"). Montana proposes revisions to the Administrative Rules of Montana (ARM) at Chapter 17.24.1109 (BONDING: LETTERS OF CREDIT). Montana intends to revise its program to incorporate the additional flexibility afforded by the revised Federal regulations and SMCRA, as amended, and to improve operational efficiency.

This document gives the times and locations that the Montana program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., m.d.t. November 4, 2010. If requested, we will hold a public hearing on the amendment on November 1, 2010. We will accept requests to speak until 4 p.m., m.d.t. on October 20, 2010.

ADDRESSES: You may submit comments identified by "SATS No. MT–031–FOR" or "Docket ID No. OSM–2010–0010," by any of the following methods:

- *E-mail: chulsman@osmre.gov.* Please Include "Docket ID No. OSM–2010–0010" in the subject line of the message.
- *Mail/Hand Delivery/Courier:* Jim Fulton, Director, Denver Field Division, Office of Surface Mining Reclamation and Enforcement, 1999 Broadway, Suite 3320, Denver, CO 80202.
- *Fax:* (307) 261–6552.
- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and Docket ID No. OSM–2010–0010. For detailed instructions on submitting comments and additional information on the rulemaking process, *see* the "Public Comment Procedures" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: Access to the docket, to review copies of the Montana program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, may be obtained at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting Office of Surface Mining Reclamation and Enforcement (OSM's) Casper Field Office. In addition, you may review a copy of the amendment during regular business hours at the following locations:

Jeffrey Fleischman, Chief, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Dick Cheney Federal Building POB 11018, 150 East B Street, Room 1018, Casper, Wyoming 82601.7032, (307) 261–6550, *jfleischman@osmre.gov.*

Edward L. Coleman, Bureau Chief, Industrial and Energy Minerals Bureau, Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620–0901, (406) 444–2544, *ecoleman@mt.gov.*

FOR FURTHER INFORMATION CONTACT: Jeffery Fleischman, Field Office Director, Casper Field Office; Telephone: (307) 261–6550; Internet address: *jfleischman@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Montana Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Montana Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Montana program on April 1, 1980. You can find background information on the Montana program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Montana program in the April 1, 1980, **Federal Register** (45 FR 21560). You can also find later actions concerning Montana's program and program amendments at 30 CFR 926.15, 926.16, and 926.30.

II. Description of the Proposed Amendment

By letter dated July 14, 2010, Montana sent us a proposed amendment to its program (Administrative Record Docket ID No. OSM–2010–0010) under SMCRA (30 U.S.C. 1201 *et seq.*). Montana sent the amendment to include the changes made at its own initiative. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

Montana proposes revisions to the Administrative Rules of Montana (ARM) at Chapter 17.24.1109 (BONDING: LETTERS OF CREDIT.

Montana proposes to change a condition for irrevocable letters of credit issued by banks as collateral in order to correct an error in the definition. Specifically, in ARM 17.24.1109(1)(e)(iii), Montana proposes to (1) substitute "capital stock" for "shareholders equity" to tailor the

[1] *Revisions to Forms and Statements, and Reporting Requirements for Natural Gas Pipelines,* 131 FERC ¶ 61,245 (2010).

definition of "total stockholders equity" to that used by the banking industry; and (2) delete the criterion to evaluate the financial strength of a bank issuing a letter of credit set forth in ARM 17.24.1109(1)(f). Upon deletion of subsection (f), (g) through (j)(iii) will remain the same, but will be renumbered (f) through (i)(iii).

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Montana program.

Electronic or Written Comments

If you submit written comments, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent Tribal or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (*see* **DATES**) or sent to an address other than those listed above (*see* **ADDRESSES**) will be included in the docket for this rulemaking and considered.

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 in the electronic docket for this rulemaking at *http://www.regulations.gov.* 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.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., m.d.t. on October 20, 2010. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT.** We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If there is only limited interest in participating in a public hearing, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the submission, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSM for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 926

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 30, 2010.

Allen D. Klein,

Regional Director, Western Region .

[FR Doc. 2010–24851 Filed 10–4–10; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2010–0613; FRL–9210–1]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from Architectural Coatings. We are approving a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by *November 4, 2010.*

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2010–0613, by one of the following methods:

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

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

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

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and

included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

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

FOR FURTHER INFORMATION CONTACT: Nicole Law, EPA Region IX, (415) 947–4126, *law.nicole@epa.gov.*

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

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I. The State's Submittal

A. What rule did the State submit?

Table 1 lists the rule addressed by this proposal with the date that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
SCAQMD	1113	Architectural Coatings	07/12/07	03/07/08

On April 17, 2008, the submittal for SCAQMD Rule 1113 was found to meet the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of this rule?

We approved an earlier version of Rule 1113 into the SIP on June 21, 1999 (64 FR 33018). The SCAQMD adopted revisions to the SIP-approved version on December 6, 2002, December 5, 2003, July 9, 2004, and June 9, 2006, and CARB submitted them to us on December 29, 2006. The latest amendment occurred on July 12, 2007 and CARB submitted it to us on March 7, 2008. While we can act on only the most recently submitted version, we have reviewed materials provided with previous submittals.

C. What is the purpose of the submitted rule revisions?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires States to submit regulations that control VOC emissions. SCAQMD Rule 1113 incorporates more stringent VOC limits and expands the averaging compliance option. EPA's technical support document (TSD) has more information about this rule.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rule?

Generally, SIP rules must be enforceable (*see* section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each major source in nonattainment areas (see sections 182(a)(2) and (b)(2)), and must not relax existing requirements (see sections 110(l) and 193).

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

1. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook).
2. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).
3. "Suggested Control Measure for Architectural Coatings," CARB, October 2007.
4. "Improving Air Quality with Economic Incentive Programs," EPA, January 2001.

B. Does the rule meet the evaluation criteria?

We believe this rule is consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. We note that Rule 1113's definition of "volatile organic compound" excludes tertiary butyl acetate (TBAc) when used in industrial maintenance coatings. EPA has exempted TBAc from the definition of VOC for purposes of control requirements such as VOC emissions limitations and content requirements, but continues to require records and reporting of TBAc emissions information. *See* 40 CFR 51.100(s)(5); 69 FR 69298 (Nov. 29, 2004). EPA believes Rule 1113's exemption does not present a disapproval issue because the State of California performs these TBAc emissions and inventory reporting requirements. In addition, industrial maintenance coatings make up a very small percentage of the overall architectural coatings category. For these reasons, EPA believes that additional recordkeeping and reporting at the District level is not necessary.

Rule 1113, section (c)(6) contains an emissions averaging provision. We evaluated this provision for consistency with EPA's EIP Guidance. EPA believes that section (c)(6) fulfills the EIP's "environmental benefit principle" because the averaging provision was important in enabling SCAQMD to adopt VOC limits for 10 coating categories that are more stringent than the national and current District architectural coating regulations.

The TSD has more information on our evaluation with respect to both of these issues.

C. EPA Recommendations To Further Improve the Rule

The following revisions are not currently the basis for rule disapproval, but are recommended for the next time the rule is amended.

1. Although tertiary butyl acetate (TBAc) is exempt as a VOC in industrial maintenance coatings, include a recordkeeping requirement for materials containing TBAc. See 40 CFR 51.100(s)(5).

2. Include a discount of emissions reductions of at least 10% into the averaging compliance option in section (c)(6), as recommended by the EIP guidance.

3. Reduce the averaging period to 30 days or less as recommended by the EIP guidance.

D. Public Comment and Final Action

Because EPA believes the submitted rule fulfills all relevant requirements, we are proposing to fully approve it as described in section 110(k)(3) of the Act. We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate this rule into the federally enforceable SIP.

III. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

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

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

Dated: September 23, 2010.

Keith Takata,

Acting Regional Administrator, Region IX.

[FR Doc. 2010–24924 Filed 10–4–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2010–0743; FRL–9209–9]

Revisions to the California State Implementation Plan; Sacramento Metropolitan Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the Sacramento Metropolitan Air Quality Management District's portion of the California State Implementation Plan (SIP). This revision concerns emissions of oxides of nitrogen (NO_X) from the landfill gas flare at the Kiefer Landfill in Sacramento, California. We are proposing to approve portions of a Permit to Operate that limit NO_X emissions from this facility under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATE: Any comments must arrive by November 4, 2010.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2010–0743, by one of the following methods:

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

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

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

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

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

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III. Statutory and Executive Order Reviews

I. The State's Submittal

A. What did the State submit?

On October 26, 2006, the Sacramento Metropolitan Air Quality Management District (SMAQMD) adopted the "Ozone State Implementation Plan Revision, Reasonably Available Control Technology (RACT) as Applicable to the 8-Hour Ozone Standard." The California Air Resources Board (CARB) submitted this SIP revision to EPA on July 11, 2007. This SIP submittal included portions of the Permit to Operate for the Kiefer Landfill, which is a major source of NO_X emissions operated by the County of Sacramento Department of Waste Management and Recycling. The submitted portions of the Permit to Operate for the Kiefer Landfill (Permit No. 17359), which was issued by the SMAQMD, relate to the control of NO_X emissions from the air pollution control landfill gas flare. The SMAQMD originally issued Permit No. 17359 on August 7, 2006, and later revised it on November 13, 2006. We are proposing to act on the submitted portions of Permit No. 17359, as revised on November 13, 2006.

On January 11, 2008, the SIP revision for SMAQMD was deemed by operation of law to meet the completeness criteria in 40 CFR part 51 appendix V, which must be met before formal EPA review.

B. Are there other versions of this document?

There are no previous versions of SMAQMD Permit No. 17359 that have been submitted or approved into the California SIP.

C. What is the purpose of the submitted document?

NO_X helps produce ground-level ozone, smog and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires States to submit regulations that control NO_X emissions. Additionally, the Sacramento Metropolitan Area is designated and classified as a severe-15 nonattainment area for the 8-hour ozone National Ambient Air Quality Standard (NAAQS). 40 CFR 81.305; 75 FR 24409 (May 5, 2010).[1] Accordingly, the SMAQMD is required to submit a revision to the SIP that meets the Reasonably Available Control Technology (RACT) requirements for major sources of NO_X emissions in CAA sections 182(b)(2) and 182(f). Permit No. 17359 limits emissions of NO_X from the landfill gas flare at the Kiefer Landfill, which is a major source of NO_X emissions.[2]

II. EPA's Evaluation and Action

A. How is EPA evaluating the submitted document?

Generally, SIP obligations must be enforceable (see section 110(a) of the Act), must require RACT for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each NO_X or volatile organic compound (VOC) major source in nonattainment areas classified as moderate or above (see sections 182(b)(2) and 182(f)), and must not relax existing requirements (see sections 110(l) and 193). The SMAQMD regulates an ozone nonattainment area classified as severe-15 for the 8-hour ozone NAAQS (40 CFR 81.305) and the Kiefer Landfill is a major source of NO_X. Therefore, the Kiefer Landfill must implement RACT.

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

1. "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).

2. "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NO_X Supplement), 57 FR 55620, November 25, 1992.

3. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook).

4. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).

B. Does the document meet the evaluation criteria?

We are proposing to approve the submitted conditions of SMAQMD Permit No. 17359 into the SMAQMD portion of the California SIP because they satisfy the applicable CAA requirements for approval. Specifically, we propose to approve permit conditions 1, 6, 10, 11, 16, 20, 27, 28, and 29, or portions thereof, which together establish an enforceable NO_X limitation satisfying RACT for the air pollution control landfill gas flare at the Kiefer Landfill. The NO_X limitation contained in the permit is consistent with the limitations contained in California district rules and emission factor data related to landfill flares. Because the applicable SIP currently does not contain NO_X limitations for the Kiefer Landfill gas flare, the approval of these permit conditions strengthens the SIP. Emissions of volatile organic compounds from the Kiefer landfill are not addressed by today's action. In sum, the submitted permit conditions satisfy the applicable requirements and guidance regarding enforceability, RACT, and SIP relaxations and may, therefore, be approved into the California SIP. Please see the docket for a copy of the complete submitted document.

C. Public Comment and Final Action

Because EPA believes the specific conditions of SMAQMD Permit No. 17359, as submitted by CARB on July 11, 2007, fulfill all relevant requirements, we are proposing to fully approve them as described in section 110(k)(3) of the Act. We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate these permit conditions into the federally-enforceable SIP.

III. Statutory and Executive Order Reviews

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

[1] The Sacramento Metropolitan area was initially classified as a "serious" nonattainment area for the 8-hour ozone NAAQS. 69 FR 23858 (April 30, 2004). On May 5, 2010, EPA granted California's request for voluntary reclassification of this area from "serious" to "severe-15," and this reclassification became effective June 4, 2010.

[2] Although the District adopted these permit conditions to satisfy the major source RACT requirement in "serious" ozone nonattainment areas (based on a 50 ton per year (tpy) threshold), the RACT requirement for this source remains unaffected by the reclassification of the area to "severe-15." This is because a major source in a serious ozone nonattainment area (based on a 50 tpy threshold) is, by definition, also a major source in a severe-15 ozone nonattainment area (based on a 25 tpy threshold). CAA 182(c), (d). Thus, under both classifications, the Kiefer Landfill is subject to the RACT requirement in CAA 182(b)(2) and 182(f).

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

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

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

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

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

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

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

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

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

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

List of Subjects in 40 CFR Part 52

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

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

Dated: September 21, 2010.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2010–24917 Filed 10–4–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–B–1142]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before January 3, 2011.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community is available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–1142, to Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *roy.e.wright@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *roy.e.wright@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

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

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

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

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

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

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

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

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
St. Clair County, Alabama, and Incorporated Areas				
Big Black Creek	Approximately 1.9 mile downstream of Whites Chapel Parkway.	None	+581	City of Trussville, Town of Argo, Town of Margaret, Town of Moody, Unincorporated Areas of St. Clair County.
	Approximately 3.1 miles upstream of County Road 6	None	+648	
Dye Creek	At Golf Course Road	None	+480	City of Pell City, Unincorporated Areas of St. Clair County.
	Approximately 0.8 mile upstream of 16th Street	None	+591	
Kelly Creek	Approximately 0.4 mile upstream of the Shelby County boundary.	None	+466	Town of Moody, Unincorporated Areas of St. Clair County.
	Approximately 0.6 mile upstream of State Route 174	None	+764	
Kerr Branch	Approximately 0.5 mile downstream of Kelly Creek Road.	+676	+685	Town of Moody.
	Approximately 0.3 mile upstream of Kelly Creek Road	None	+695	
Little Black Creek	Approximately 110 feet downstream of Acmor Road	None	+594	Town of Margaret, Town of Moody, Unincorporated Areas of St. Clair County.
	Approximately 2.5 miles upstream of the railroad	None	+860	
Middle Black Creek	Approximately 1.0 mile downstream of the railroad bridge.	None	+601	Town of Argo, Town of Margaret, Town of Odenville, Unincorporated Areas of St. Clair County.
	Approximately 3.8 miles upstream of County Road 6	None	+727	

* National Geodetic Vertical Datum.
\+ North American Vertical Datum.
\# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Pell City
Maps are available for inspection at 1905 1st Avenue North, Pell City, AL 35125.

City of Trussville
Maps are available for inspection at 131 Main Street, Trussville, AL 35173.

Town of Argo
Maps are available for inspection at 8885 Gadsden Highway, Argo, AL 35173.

Town of Margaret
Maps are available for inspection at 125 School Street, Margaret, AL 35112.

Town of Moody
Maps are available for inspection at 670 Park Avenue, Moody, AL 35004.

Town of Odenville
Maps are available for inspection at 183 Alabama Street, Odenville, AL 35120.

Unincorporated Areas of St. Clair County
Maps are available for inspection at 165 5th Avenue, Suite 100, Ashville, AL 35953.

Madison County, Missouri, and Incorporated Areas				
Little Saint Francis River	Approximately 675 feet downstream of U.S. Route 67	None	+689	City of Fredericktown, Unincorporated Areas of Madison County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
	Approximately 1.3 mile downstream of County Road 220.	None	+743	
Little Saint Francis River Tributary 1.	At the confluence with the Little Saint Francis River ...	+704	+700	City of Fredericktown, Unincorporated Areas of Madison County.
	Just downstream of County Road 218	None	+769	
Mill Creek (backwater effects from Little Saint Francis River).	From the confluence with the Little Saint Francis River to approximately 665 feet downstream of County Road 500.	None	+690	Unincorporated Areas of Madison County.
Saline Creek	At the confluence with the Little Saint Francis River ...	+707	+703	Unincorporated Areas of Madison County.
	Approximately 550 feet downstream of the confluence with Goose Creek.	None	+736	
Spiva Branch (backwater effects from Little Saint Francis River).	From the confluence with the Little Saint Francis River to just upstream of County Road 201.	None	+692	Unincorporated Areas of Madison County.
Tollar Branch	At the confluence with Saline Creek	+714	+713	City of Fredericktown, Unincorporated Areas of Madison County.
	Approximately 1,310 feet upstream of Mine LaMotte Street.	None	+788	
Village Creek	At the confluence with the Little Saint Francis River ...	+707	+704	City of Fredericktown, Unincorporated Areas of Madison County.
	Just upstream of Catherine Mine Road	+708	+707	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Fredericktown

Maps are available for inspection at City Hall, 124 West Main Street, Fredericktown, MO 63645.

Unincorporated Areas of Madison County

Maps are available for inspection at the Madison County Courthouse, 1 Courthouse Square, Fredericktown, MO 63645.

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

Dated: September 13, 2010.

Sandra K. Knight,

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

[FR Doc. 2010–24866 Filed 10–4–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–B–1134]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before January 30, 2011.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community is available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–1134, to Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *roy.e.wright@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *roy.e.wright@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

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

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

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

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

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

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

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

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground − Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Gallatin County, Illinois, and Incorporated Areas				
Ohio River	Approximately 1,666 feet downstream of Garfield Street (IL–13).	None	+367	City of Shawneetown, Unincorporated Areas of Gallatin County, Village of Old Shawneetown.
	Approximately 1.19 mile upstream of Garfield Street (IL–13), approximately at River Mile 857.	+368	+367	

* National Geodetic Vertical Datum.

\+ North American Vertical Datum.

\# Depth in feet above ground.

− Mean Sea Level, rounded to the nearest 0.1 meter.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Shawneetown

Maps are available for inspection at City Hall, 330 North Lincoln Boulevard, Shawneetown, IL 62984.

Unincorporated Areas of Gallatin County

Maps are available for inspection at the Gallatin County Courthouse, 484 North Lincoln Boulevard West, Shawneetown, IL 62984.

Village of Old Shawneetown

Maps are available for inspection at the Old Shawneetown Village Hall, 332 Washington Street, Shawneetown, IL 62984.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground − Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Hardin County, Illinois, and Incorporated Areas				
Beaver Creek	Approximately 1.58 mile upstream of IL–1	None	+366	Unincorporated Areas of Hardin County.
	Approximately 1.92 mile upstream of IL–1	None	+366	
Ohio River	Approximately 1.34 mile downstream of Ferry Road extended (River Mile 894).	+355	+356	City of Rosiclare, Unincorporated Areas of Hardin County, Village of Elizabethtown.
	Approximately 1.97 mile upstream of Main Street extended (River Mile 887).	+358	+359	
Unnamed Tributary to Beaver Creek (East).	Approximately 1,500 feet upstream of the confluence with Beaver Creek.	None	+366	Unincorprated Areas of Hardin County.
	Approximately 0.69 mile upstream of the confluence with Beaver Creek.	None	+366	
Unnamed Tributary to Beaver Creek (West).	Approximately 1,500 feet upstream of the confluence with Beaver Creek.	None	+366	Unincorporated Areas of Hardin County.
	Approximately 0.99 mile upstream of the confluence with Beaver Creek.	None	+366	
Unnamed Tributary to Saline River.	Approximately 1,800 feet upstream of the confluence with the Saline River.	None	+366	Unincorporated Areas of Hardin County.
	Approximately 2,000 feet upstream of the confluence with the Saline River.	None	+366	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
− Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Rosiclare

Maps are available for inspection at City Hall, Main Street, Rosiclare, IL 62982.

Unincorporated Areas of Hardin County

Maps are available for inspection at the Hardin County Courthouse, 203 North Main Street, Elizabethtown, IL 62931.

Village of Elizabethtown

Maps are available for inspection at the Village Hall, 1 Locust Street, Elizabethtown, IL 62931.

Saline County, Illinois, and Incorporated Areas				
Bankston Fork (backwater effects from Ohio River).	At the confluence with Middle Fork Saline River	None	+367	City of Harrisburg, Unincorporated Areas of Saline County.
	Approximately 1,150 feet upstream of St. Mary's Drive.	None	+367	
Brier Creek	At the confluence with Middle Fork Saline River	None	+367	Unincorporated Areas of Saline County.
	Approximately 0.53 mile upstream of IL–34	None	+367	
Cockerel Branch (backwater effects from Ohio River).	Approximately 1.1 mile downstream of County Highway 13.	None	+367	Unincorporated Areas of Saline County.
	At Thaxton Road	None	+367	
Eldorado Tributary	At the confluence with Middle Fork Saline River	None	+367	Unincorporated Areas of Saline County.
	Approximately 1,545 feet downstream of Sutton Road	None	+367	
Middle Fork Saline River (backwater effects from Ohio River).	At the confluence with South Fork Saline River	None	+367	City of Harrisburg, Unincorporated Areas of Saline County, Village of Muddy.
	Approximately 2.4 miles upstream of IL–34	None	+367	
Saline River (backwater effects from Ohio River).	Approximately 3.5 miles downstream of Rocky Branch Road.	None	+367	Unincorporated Areas of Saline County.
	At the confluence of Middle Fork and South Fork Saline River.	None	+367	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground − Elevation in meters (MSL)		Communities affected
		Effective	Modified	
South Fork Saline River (backwater effects from Ohio River).	At the confluence with Middle Fork Saline River	None	+367	Unincorporated Areas of Saline County.
	Approximately 2.0 miles downstream of IL–34	None	+367	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
− Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Harrisburg
Maps are available for inspection at City Hall, 110 East Locust Street, Harrisburg, IL 62946.

Unincorporated Areas of Saline County
Maps are available for inspection at the Saline County Courthouse, 10 East Poplar Street, Harrisburg, IL 62946.

Village of Muddy
Maps are available for inspection at the Village Hall, 60 Maple Street, Muddy, IL 62965.

Chisago County, Minnesota, and Incorporated Areas

Lake Ellen	Entire shoreline	None	+895	City of Chisago City.
Skogman Lake	Entire shoreline within Chisago County	None	+950	Unincorporated Areas of Chisago County.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
− Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Chisago City
Maps are available for inspection at City Hall, 10625 Railroad Avenue, Chisago City, MN 55013.

Unincorporated Areas of Chisago County
Maps are available for inspection at the Chisago County Government Center, 313 North Main Street, Center City, MN 55012.

Marion County, Tennessee, and Incorporated Areas

Little Sequatchie River	Approximately 2,500 feet downstream of Valley View Highway.	+630	+628	Unincorporated Areas of Marion County.
	Approximately 1,400 feet downstream of Valley View Highway.	+631	+630	
Town Creek	Just upstream of U.S. Route 64	None	+619	Town of Jasper.
	Approximately 4,000 feet upstream of U.S. Route 64	None	+619	
West Fork Pryor Cove Branch.	At the confluence with Pryor Cove Branch	+716	+717	Town of Jasper, Unincorporated Areas of Marion County.
	Approximately 3,200 feet upstream of the confluence with Pryor Cove Branch.	+786	+784	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
− Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground − Elevation in meters (MSL)		Communities affected
		Effective	Modified	

Send comments to Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Town of Jasper
Maps are available for inspection at 4460 Main Street, Jasper, TN 37347.

Unincorporated Areas of Marion County
Maps are available for inspection at 4460 Main Street, Jasper, TN 37347.

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

Dated: September 21, 2010.

Edward L. Connor,

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

[FR Doc. 2010–24868 Filed 10–4–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–B–1147]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before January 3, 2011.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community is available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–1147, to Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *roy.e.wright@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *roy.e.wright@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

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

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

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

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

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

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

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

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)	
				Existing	Modified
City of Indianola, Nebraska					
Nebraska	City of Indianola	Coon Creek	Approximately 260 feet downstream of Burlington Northern Railroad.	+2379	+2378
			Approximately 1.13 mile upstream of D Street.	+2399	+2397

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Indianola

Maps are available for inspection at 210 North 4th Street, Indianola, NE 69034.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Marshall County, Iowa, and Incorporated Areas				
Iowa River	Approximately 0.47 mile downstream of Main Street Road.	None	+861	Unincorporated Areas of Marshall County.
	Approximately 1.25 mile upstream of Prairie Avenue ..	None	+881	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
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ADDRESSES

Unincorporated Areas of Marshall County

Maps are available for inspection at the Marshall County Courthouse, 1 East Main Street, Marshalltown, IA 50158.

Concordia Parish, Louisiana, and Incorporated Areas				
Bayou Cocodrie	Approximately 751 feet upstream of Louisiana Highway 15.	None	+53	Town of Ferriday, Unincorporated Areas of Concordia Parish.
	Just downstream of Fisherman Drive	None	+56	
Canal No. 1	Approximately 3,394 feet upstream of Deacon Wailes Road.	None	+55	Town of Ridgecrest, Unincorporated Areas of Concordia Parish.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Vidalia Canal	Just downstream of U.S. Route 84	None	+57	Town of Vidalia, Unincorporated Areas of Concordia Parish.
	Approximately 2,560 feet upstream of Missouri Pacific Railroad.	None	+57	
	Just upstream of Laurel Street	None	+63	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
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ADDRESSES

Town of Ferriday
Maps are available for inspection at 1116 2nd Street, Ferriday, LA 71334.

Town of Ridgecrest
Maps are available for inspection at 116 Foster Drive, Ridgecrest, LA 71334.

Town of Vidalia
Maps are available for inspection at 101 North Spruce Street, Vidalia, LA 71373.

Unincorporated Areas of Concordia Parish
Maps are available for inspection at 4001 Carter Street, Room 1, Vidalia, LA 71373.

Iosco County, Michigan (All Jurisdictions)

Cedar Lake	Entire shoreline in Iosco County	None	+609	Township of Oscoda.
Lake Huron	Entire shoreline in the Township of Alabaster	+583	+584	Township of Alabaster.

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+ North American Vertical Datum.
# Depth in feet above ground.
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ADDRESSES

Township of Alabaster
Maps are available for inspection at 1716 South U.S. Route 23, Tawas City, MI 48763.

Township of Oscoda
Maps are available for inspection at 110 South State Street, Oscoda, MI 48750.

Washington County, Nebraska, and Incorporated Areas

Cameron Ditch	At the confluence with the Missouri River	+1007	+1009	City of Blair.
	Just downstream of Washington Street	+1008	+1009	
Cauble Creek	Just upstream of U.S. Route 75 (Herman Boulevard)	+1055	+1064	City of Blair.
	Approximately 1,500 feet west of Nebraska Highway 31.	None	+1243	
Cauble Creek East Tributary	At the confluence with Cauble Creek	+1033	+1036	City of Blair.
	Approximately 100 feet downstream of Pinewood Drive.	+1037	+1036	
Missouri River	At the Douglas County boundary	+994	+995	City of Blair, City of Fort Calhoun, Unincorporated Areas of Washington County, Village of Herman.
	At the Burt County boundary	+1017	+1018	
Unnamed Creek	Approximately 400 feet downstream of South 10th Street.	+1059	+1066	City of Blair.
	Approximately 1,500 feet upstream of Pi Hack Street	None	+1233	

* National Geodetic Vertical Datum.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	

+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
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ADDRESSES

City of Blair
Maps are available for inspection at 218 South 16th Street, Blair, NE 68008.

City of Fort Calhoun
Maps are available for inspection at 110 South 14th Street, Fort Calhoun, NE 68023.

Unincorporated Areas of Washington County
Maps are available for inspection at 111 West 4th Street, Kennard, NE 68034.

Village of Herman
Maps are available for inspection at 504 U.S. Route 75, Herman, NE 68029.

Garvin County, Oklahoma, and Incorporated Areas

Rush Creek	Approximately 0.6 mile downstream of the railroad	None	+856	Unincorporated Areas of Garvin County.
	Approximately 1.46 mile upstream of I–35	None	+890	
Washita Creek	Approximately 1,000 feet upstream of the confluence with Keel Sandy Creek.	None	+852	Unincorporated Areas of Garvin County.
	Approximately 0.84 mile upstream of the confluence with Rounds Creek.	None	+981	

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ADDRESSES

Unincorporated Areas of Garvin County
Maps are available for inspection at the Garvin County Courthouse, 201 West Grant Avenue, Pauls Valley, OK 73075.

Beaver County, Pennsylvania (All Jurisdictions)

Beaver River	Approximately 50 feet upstream of New Brighton Dam	None	+714	Borough of Koppel, Township of Patterson.
	Approximately 790 feet upstream of 5th Avenue (State Route 351).	None	+759	
Blockhouse Run	Approximately 410 feet downstream of Willow Tree Estate.	None	+808	Township of Pulaski.
	Approximately 144 feet upstream of Willow Tree Estate.	None	+814	
Brady Run	Approximately 0.23 mile upstream of Colonial Street	None	+720	Township of Brighton.
	Approximately 0.56 mile upstream of Colonial Street	None	+732	
Connoquenessing Creek	Approximately 670 feet downstream of Zelienople Road (State Route 288).	None	+852	Township of North Sewickley.
	Approximately 0.67 mile downstream of Mercer Road (State Route 65).	None	+857	
Dutchman Run	Approximately 0.89 mile upstream of 3rd Avenue	None	+806	Township of New Sewickley.
	Approximately 0.91 mile upstream of 3rd Avenue	None	+809	
Elkhorn Run	Just upstream of Elkrun Road	None	+707	Borough of Monaca.
	Approximately 1,680 feet upstream of Elkrun Road	None	+727	
Lacock Run	Approximately 25 feet downstream of East Washington Street.	None	+797	Borough of East Rochester.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Logtown Run	Approximately 1,020 feet upstream of Angela Drive	None	+914	Township of Hopewell.
	Approximately 1,046 feet upstream of Angela Drive	None	+914	
North Fork Little Beaver Creek.	At the confluence with West Clarks Run	None	+911	Township of Darlington.
	At the northern county boundary	None	+941	
Ohio River	Approximately 60 feet upstream of the confluence with Little Beaver Creek.	None	+690	Borough of Georgetown, Borough of Monaca, Borough of Ohioville, Township of Greene, Township of Hopewell, Township of Raccoon.
	Approximately 80 feet upstream of the confluence with Big Sewickley Creek.	None	+711	
Raccoon Creek	Approximately 0.39 mile downstream of the Beaver Valley Expressway (State Route 60).	None	+757	Township of Independence, Township of Raccoon.
	Approximately 1.72 mile upstream of the confluence with Service Creek.	None	+789	
Tributary to Walnut Bottom Run.	Approximately 720 feet upstream of Patterson Avenue.	None	+901	Township of White.
	Approximately 790 feet upstream of Patterson Avenue.	None	+903	
Two Mile Run	Approximately 300 feet upstream of Tuscarawas Road.	None	+771	Borough of Beaver.
	Approximately 990 feet upstream of Tuscarawas Road.	None	+777	
Wallace Run	Approximately 135 feet downstream of the culvert for the Babcock and Wilcox Plant.	None	+900	Township of Chippewa.
	Approximately 0.53 mile upstream of Shenango Road	None	+1107	

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+ North American Vertical Datum.
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ADDRESSES

Borough of Beaver
Maps are available for inspection at the Borough Hall, 469 3rd Street, Beaver, PA 15009.

Borough of East Rochester
Maps are available for inspection at the Borough Hall, 760 Spruce Street, East Rochester, PA 15074.

Borough of Georgetown
Maps are available for inspection at the Borough Hall, Main Street, Georgetown, PA 15043.

Borough of Koppel
Maps are available for inspection at the Borough Hall, 3437 3rd Street, Koppel, PA 16136.

Borough of Monaca
Maps are available for inspection at the Borough Hall, 928 Pennsylvania Avenue, Monaca, PA 15061.

Borough of Ohioville
Maps are available for inspection at the Ohioville Borough Hall, 6268 Tuscarawas Road, Industry, PA 15052.

Township of Brighton
Maps are available for inspection at the Brighton Township Hall, 1300 Brighton Road, Beaver, PA 15009.

Township of Chippewa
Maps are available for inspection at the Chippewa Township Hall, 2811 Darlington Road, Beaver Falls, PA 15010.

Township of Darlington
Maps are available for inspection at the Township Hall, 3590 Darlington Road, Darlington, PA 16115.

Township of Greene
Maps are available for inspection at the Greene Township Hall, 1128 State Route 168, Hookstown, PA 15050.

Township of Hopewell
Maps are available for inspection at the Hopewell Township Hall, 1700 Clark Boulevard, Aliquippa, PA 15001.

Township of Independence

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	

Maps are available for inspection at the Independence Township Hall, 104 School Road, Aliquippa, PA 15001.

Township of New Sewickley
Maps are available for inspection at the New Sewickley Township Hall, 233 Miller Road, Rochester, PA 15074.

Township of North Sewickley
Maps are available for inspection at the North Sewickley Township Hall, 893 Mercer Road, Beaver Falls, PA 15010.

Township of Patterson
Maps are available for inspection at the Patterson Township Hall, 1600 19th Avenue, Beaver Falls, PA 15010.

Township of Pulaski
Maps are available for inspection at the Pulaski Township Municipal Building, 3401 Sunflower Road, New Brighton, PA 15009.

Township of Raccoon
Maps are available for inspection at the Raccoon Township Hall, 1234 State Route 18, Aliquippa, PA 15001.

Township of White
Maps are available for inspection at the White Township Hall, 2511 13th Avenue, Beaver Falls, PA 15010.

Butler County, Pennsylvania (All Jurisdictions)

Bonnie Brook	Approximately 0.30 mile upstream of the confluence with Connoquenessing Creek.	None	+1007	Township of Summit.
	Approximately 0.32 mile upstream of the confluence with Bonnie Brook Tributary 2.	None	+1027	
Connoquenessing Creek	Approximately 0.33 mile downstream of West New Castle Street.	+900	+902	Borough of Zelienople, Township of Butler, Township of Oakland, Township of Summit.
	Approximately 0.43 mile upstream of Hendricks Road	None	+1015	
Little Connoquenessing Creek (backwater effects from Connoquenessing Creek).	At the confluence with Connoquenessing Creek	+911	+913	Township of Jackson.
	Approximately 1.08 mile upstream of the confluence with Connoquenessing Creek.	+912	+913	
Sullivan Run	Approximately 0.34 mile upstream of North 6th Avenue.	None	+1016	Township of Butler.
	Approximately 0.37 mile upstream of North 6th Avenue.	None	+1017	
Thorn Creek No. 2 (backwater effects from Connoquenessing Creek).	At the confluence with Connoquenessing Creek	None	+1011	Township of Oakland, Township of Summit.
	Approximately 0.31 mile upstream of the confluence with Connoquenessing Creek.	None	+1012	

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ADDRESSES

Borough of Zelienople
Maps are available for inspection at the Zelienople Borough Municipal Building, 111 West New Castle Street, Zelienople, PA 16063.

Township of Butler
Maps are available for inspection at the Township Hall, 290 South Duffy Street, Butler, PA 16001.

Township of Jackson
Maps are available for inspection at the Jackson Township Hall, 140 Magill Road, Zelienople, PA 16063.

Township of Oakland
Maps are available for inspection at the Oakland Township Hall, 565 Chicora Road, Butler, PA 16001.

Township of Summit
Maps are available for inspection at the Summit Township Hall, 502 Bonniebrook Road, Butler, PA 16002.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Fayette County, Pennsylvania (All Jurisdictions)				
Bennington Spring Run	Approximately 10 feet downstream of the National Road (U.S. Route 40).	None	+1101	Township of North Union.
	Just downstream of the National Road (U.S. Route 40).	None	+1101	
Connell Run	Approximately 510 feet upstream of Locust Street	None	+1035	Township of Connellsville.
	Approximately 580 feet upstream of Locust Street	None	+1036	
Dunbar Creek	Approximately 438 feet upstream of Connellsville Street.	None	+986	Borough of Dunbar.
	Approximately 444 feet upstream of Connellsville Street.	None	+986	
Georges Creek	Approximately 250 feet downstream of Water Street (Rubles Mill Road).	None	+962	Borough of Smithfield, Township of Georges.
	Just upstream of North Main Street	None	+1112	
Indian Creek	Approximately 0.85 mile downstream of Indian Head Road.	None	+1373	Township of Springfield.
	Approximately 0.83 mile downstream of Indian Head Road.	None	+1373	
Little Redstone Creek	Approximately 0.24 mile upstream of Brownsville Road (State Route 208).	None	+780	Township of Jefferson.
	Approximately 0.26 mile upstream of Brownsville Road (State Route 208).	None	+781	
Mill Run to Litz Creek	Approximately 0.80 mile upstream of Redstone Church Road (Township Route 434).	None	+1019	Township of Perry.
	Approximately 0.83 mile upstream of Redstone Church Road (Township Route 434).	None	+1019	
Redstone Creek	Approximately 0.27 mile downstream of Taylor Flats Road (Township Route 422).	None	+773	Township of Jefferson, Township of Redstone.
	Approximately 325 feet downstream of Pleasant View Smock Road (State Route 4016).	None	+871	
Tributary A to Little Redstone Creek.	Approximately 1,371 feet upstream of State Route 201.	None	+789	Township of Jefferson.
	Approximately 1,379 feet upstream of State Route 201.	None	+789	
Youghiogheny River	Approximately 0.57 mile upstream of the confluence with Trump Run.	None	+892	Borough of South Connellsville, Township of Stewart.
	Approximately 4.67 miles upstream of the confluence with Indian Creek.	None	+1025	

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+ North American Vertical Datum.
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ADDRESSES

Borough of Dunbar
Maps are available for inspection at the Borough Hall, 47 Connellsville Street, Dunbar, PA 15431.

Borough of Smithfield
Maps are available for inspection at the Borough Hall, 14 Water Street, Smithfield, PA 15478.

Borough of South Connellsville
Maps are available for inspection at the Borough Hall, 1503 South Pittsburgh Street, South Connellsville, PA 15425.

Township of Connellsville
Maps are available for inspection at the Township Municipal Building, 166 McCoy Hollow Road, Connellsville, PA 15425.

Township of Georges
Maps are available for inspection at the Georges Township Hall, 1151 Township Drive, Uniontown, PA 15401.

Township of Jefferson
Maps are available for inspection at the Jefferson Township Hall, 262 Stuckslager Road, Perryopolis, PA 15473.

Township of North Union

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	

Maps are available for inspection at the North Union Township Hall, 7 South Evans Station Road, Lemont Furnace, PA 15456.

Township of Perry

Maps are available for inspection at the Perry Township Hall, 1 Township Drive, Star Junction, PA 15482.

Township of Redstone

Maps are available for inspection at the Redstone Township Hall, 225 Twin Hills Road, Grindstone, PA 15442.

Township of Springfield

Maps are available for inspection at the Springfield Township Municipal Building, 755 Mill Run Road, Mill Run, PA 15464.

Township of Stewart

Maps are available for inspection at the Stewart Township Hall, 373 Groover Road, Ohiopyle, PA 15464.

Tioga County, Pennsylvania (All Jurisdictions)

Camp Brook Creek	Approximately 1,900 feet downstream of East Main Street.	None	+1124	Township of Nelson.
	Approximately 460 feet downstream of East Main Street.	None	+1127	
Charleston Creek	Approximately 2,670 feet upstream of Jackson Street	None	+1325	Township of Charleston.
	Approximately 2,720 feet upstream of Jackson Street	None	+1326	
Cowanesque River Reach 2	Approximately 3,600 feet downstream of State Route 49.	None	+1124	Borough of Elkland, Township of Deerfield, Township of Nelson.
	Approximately 2.4 miles upstream of Holden Street	None	+1184	
Crooked Creek	Approximately 0.2 mile upstream of Bear Creek Road (Legislative Route 58122).	None	+1024	Borough of Tioga.
	Approximately 690 feet upstream of Mann Hill Road (Cowanesque Street).	None	+1034	
Tioga River Reach 1	Approximately 0.3 mile upstream of State Route 287	None	+1024	Borough of Tioga.
	Approximately 0.8 mile upstream of Park Street	None	+1034	
Tioga River Reach 2	Approximately 1.2 mile downstream of Spencer Road	None	+1139	Borough of Mansfield, Township of Hamilton.
	Approximately 0.4 mile upstream of Gulick Street	None	+1401	

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ADDRESSES

Borough of Elkland

Maps are available for inspection at the Borough Hall, 105 Parkhurst Street, Elkland, PA 16920.

Borough of Mansfield

Maps are available for inspection at the Borough Hall, 14 South Main Street, Mansfield, PA 16933.

Borough of Tioga

Maps are available for inspection at the Borough Office, 18 North Main Street, Tioga, PA 16946.

Township of Charleston

Maps are available for inspection at the Charleston Township Building, 156 Catlin Hollow Road, Wellsboro, PA 16901.

Township of Deerfield

Maps are available for inspection at the Deerfield Township Building, 5322 State Route 49, Knoxville, PA 16928.

Township of Hamilton

Maps are available for inspection at the Hamilton Township Municipal Building, 16 Tioga Street, Morris Run, PA 16939.

Township of Nelson

Maps are available for inspection at the Nelson Township Community Building, 111 Village Drive, Nelson, PA 16940.

Warren County, Pennsylvania (All Jurisdictions)

Allegheny River	Approximately 4.65 miles downstream of U.S. Route 62.	None	+1141	Township of Deerfield.
	Approximately 4.21 miles downstream of U.S. Route 62.	None	+1143	
Brokenstraw Creek	Approximately 0.16 mile upstream of Airport Road	None	+1236	Township of Pittsfield.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
	Approximately 0.27 mile upstream of Airport Road	None	+1237	
Conewango Creek	Approximately 0.96 mile upstream of Hatch Run Road	None	+1212	Township of Pine Grove.
	Approximately 1.24 mile upstream of Hatch Run Road	None	+1214	
Tributary No. 1 to Stillwater Creek.	Approximately 0.53 mile downstream of Jamestown Road.	None	+1360	Township of Sugar Grove.
	Approximately 0.49 mile downstream of Jamestown Road.	None	+1361	

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∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Township of Deerfield
Maps are available for inspection at the Deerfield Township Building, 4638 Morrison Run Road, Tidioute, PA 16350.

Township of Pine Grove
Maps are available for inspection at the Pine Grove Township Municipal Building, 113 Liberty Street, Russell, PA 16345.

Township of Pittsfield
Maps are available for inspection at the Pittsfield Township Municipal Building, 488 Dalrymple Street, Pittsfield, PA 16340.

Township of Sugar Grove
Maps are available for inspection at the Township Building, 195 Creek Road, Sugar Grove, PA 16350.

Palo Pinto County, Texas, and Incorporated Areas

Brazos River	Approximately 7.89 miles downstream of the confluence with Palo Pinto Creek.	None	+768	Unincorporated Areas of Palo Pinto County.
	Approximately 5.43 miles downstream of the confluence with Palo Pinto Creek.	None	+773	
Crystal Creek	Just upstream of 16th Street	None	+915	City of Mineral Wells.
	Just upstream of 2nd Street	None	+960	
Pollard Creek	Approximately 387 feet upstream of Ferguson Road ..	None	+836	Unincorporated Areas of Palo Pinto County.
	Approximately 118 feet downstream of Pollard Park Road.	None	+921	
Pollard Creek Tributary No. 1	Just upstream of Southwest 22nd Street	None	+844	Unincorporated Areas of Palo Pinto County.
	Just downstream of Southwest 10th Street	None	+861	
Pollard Creek Tributary No. 5	Approximately 850 feet upstream of Northeast 23rd Street.	None	+1032	Unincorporated Areas of Palo Pinto County.
	Just upstream of Northeast 23rd Street	None	+1049	
Rock Creek	Just upstream of FM 1195	None	+846	Unincorporated Areas of Palo Pinto County.
	Approximately 0.82 mile upstream of FM 1195	None	+857	
Rock Creek Tributary No. 1 ..	Approximately 425 feet upstream of Northeast 23rd Street.	None	+972	Unincorporated Areas of Palo Pinto County.
	Approximately 600 feet upstream of Northeast 23rd Street.	None	+972	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Mineral Wells
Maps are available for inspection at City Hall, 115 Southwest 1st Street, Mineral Wells, TX 76068.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Unincorporated Areas of Palo Pinto County				
Maps are available for inspection at the Palo Pinto County Courthouse, 520 Oak Street, Palo Pinto, TX 76484.				

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

Dated: September 13, 2010.

Sandra K. Knight,

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

[FR Doc. 2010–24869 Filed 10–4–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 227

[Docket No. FRA–2009–0044, Notice No. 1]

RIN 2130–AC14

Emergency Escape Breathing Apparatus Standards

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: FRA is proposing to amend its regulations related to occupational safety and health in locomotive cabs in three ways. First and foremost, pursuant to a 2008 Congressional mandate, FRA is proposing to include requirements that railroads provide an appropriate atmosphere-supplying emergency escape breathing apparatus (EEBA) to the members of the train crew and certain other employees while they are occupying the locomotive cab of a freight train transporting a hazardous material that would pose an inhalation hazard in the event of release during an accident. Second, FRA is proposing to reflect the additional subject matter by changing the name of the part from "Occupational Noise Exposure" to "Occupational Safety and Health in the Locomotive Cab" and by making other conforming amendments. Third, FRA is proposing to remove the provision on the preemptive effect of the requirements as unnecessary.

DATES: Written comments must be received by December 6, 2010. Comments received after that date will be considered to the extent possible without incurring additional delay or expense.

FRA anticipates being able to resolve this rulemaking without a public, oral hearing. However, if FRA receives a specific request for a public, oral hearing prior to December 6, 2010, one will be scheduled, and FRA will publish a supplemental notice in the **Federal Register** to inform interested parties of the date, time, and location of any such hearing.

ADDRESSES: You may submit comments related to Docket No. FRA–2009–0044, Notice No. 1, by any one of the following methods:

- *Fax:* 1–202–493–2251;
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590;
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, 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; or
- Electronically through the Federal eRulemaking Portal, *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name, docket name, and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Alan Misiaszek, Certified Industrial Hygienist, Staff Director, Industrial Hygiene Division, Office of Safety Assurance and Compliance, Office of Railroad Safety, FRA, 1200 New Jersey Avenue, SE., Mail Stop 25, Washington, DC 20590 (*telephone:* (202) 493–6002), *alan.misiaszek@dot.gov* or Stephen N. Gordon, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue, SE., Mail Stop 10, Washington, DC 20590 (telephone: (202) 493–6001), *stephen.n.gordon@dot.gov.*

SUPPLEMENTARY INFORMATION:

Abbreviations and Terms Used in This Document

AAR—Association of American Railroads
BNSF—BNSF Railway Company
BLET—Brotherhood of Locomotive Engineers and Trainmen
CFR—Code of Federal Regulations
DOT—U.S. Department of Transportation
EEBA—emergency escape breathing apparatus
FRA—Federal Railroad Administration
FRSA—the former Federal Railroad Safety Act of 1970, repealed and reenacted as positive law at 49 U.S.C 20106
IDLH—immediate danger to life or health or immediately dangerous to life or health
ISO—International Organization for Standardization
LBIA—the former Locomotive (Boiler) Inspection Act, repealed and reenacted as positive law in 49 U.S.C. 20701–20703
NIOSH—National Institute for Occupational Safety and Health
NPRM—notice of proposed rulemaking
NS—Norfolk Southern Railway Company
NTSB—National Transportation Safety Board
OSHA—Occupational Safety and Health Administration
PHMSA—Pipeline and Hazardous Materials Safety Administration
PIH material—poison inhalation hazard material
ppm—parts per million
RCO—remote control operator
RSIA—Rail Safety Improvement Act of 2008, Public Law 110–432, Division A
SCBA—self-contained breathing apparatus
SBA—Small Business Administration
T&E employees—train and engine service employees

UP—Union Pacific Railroad Company
UTU—United Transportation Union

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I. Statutory Background and More Detailed Summary of Proposed Regulation

The proposed regulation governing the provision of EEBAs is being promulgated primarily to satisfy the requirements of section 413 of the RSIA, Public Law 110–432, Div. A, 122 Stat. 4848, October 16, 2008 (49 U.S.C. 20166). The RSIA mandates that the Secretary of Transportation (Secretary) adopt regulations requiring railroads to provide EEBAs for the train crews in the locomotive cabs of any freight train transporting a hazardous material in commerce that would present an inhalation hazard in the event of a release. Specifically, the statute instructs the Secretary to prescribe regulations requiring railroads to—(1) Ensure that EEBAs affording suitable "head and neck coverage with respiratory protection" are provided "for all crewmembers" in a locomotive cab on a freight train transporting "hazardous materials that would pose an inhalation hazard in the event of a release"; (2) provide a place for convenient storage of EEBAs in the locomotive that will allow "crewmembers to access such apparatus quickly"; (3) maintain EEBAs "in proper working condition"; and (4) provide crewmembers with appropriate instruction in the use of EEBAs. The Secretary has delegated the responsibility to carry out his responsibilities under this section of the RSIA to the Administrator of FRA. 74 FR 26981, 26982, June 5, 2009, 49 CFR 1.49(oo). In addition, this proposed regulation is issued under the authority of 49 U.S.C. 20103 and 49 U.S.C. 20701–20703, as delegated to the Administrator of FRA pursuant to 49 CFR 1.49(c) and (m).

If adopted, proposed new subpart C of 49 CFR part 227 would require any railroad transporting a hazardous material that would pose an inhalation hazard if released during an accident to provide an appropriate atmosphere-supplying EEBA to train employees, direct supervisors of those train employees, deadheading employees, and, at the discretion of the railroad, other employees designated by the railroad in writing. FRA's concern in proposing the requirement for the provision of EEBAs is focused on inhalation hazards that can occur by one of two ways: either by displacement of oxygen in the atmosphere or by poisoning. Termed "asphyxiants and PIH materials" in the proposed regulation, the covered materials are flammable gases; non-flammable, nonpoisonous compressed gases; gases poisonous by inhalation; and certain other materials classified as poisonous by inhalation within the meaning of the PHMSA's Hazardous Materials Regulations. *See* 49 CFR parts 171–180. The EEBAs are intended to protect these employees from the risk of exposure to such hazardous materials during the period while the employees are located in the locomotive cab or escaping from the locomotive cab.

The proposed regulation governing EEBAs would also require railroads that transport an asphyxiant or a PIH material on the general railroad system of transportation to establish and carry out a series of programs for the following purposes: Selection, procurement, and provision of the devices; inspection, maintenance, and replacement of the devices; and instruction of employees in the use of the devices. Railroads would be required to identify individual employees or positions to be placed in their general EEBA programs so that a sufficient number of EEBAs are available and to ensure that the identified employees or incumbents of the identified positions know how to use the devices. The proposed regulation would require that convenient storage be provided for EEBAs in the locomotive to enable employees to access the apparatus quickly in the event of a release of a hazardous material that poses an inhalation hazard.

Because the new proposed regulation would be placed in 49 CFR part 227, FRA also proposes to make conforming changes, minor corrections, and updates to the existing provisions of part 227. Finally, FRA proposes to remove the provision at 49 CFR 227.7 on the preemptive effect of that part. After considering revising the section to reflect the preemptive effect of 49 U.S.C. 20701–20703, FRA has decided to eliminate the section as duplicative of statutory law and case law.

II. Regulatory Background

Hazardous materials that pose an inhalation hazard (termed "asphyxiants and PIH materials" in the proposed regulation) fall into two, sometimes overlapping categories defined in the Hazardous Materials Regulations. In particular, asphyxiants and PIH materials are (1) the gases classified by 49 CFR 173.115 as "Class 2, Division 2.1 (Flammable gas)"; Class 2, "Division 2.2 (non-flammable, nonpoisonous compressed gas—including compressed gas, liquefied gas, pressurized cryogenic gas, compressed gas in solution, asphyxiant gas and oxidizing gas)"; or Class 2, "Division 2.3 (Gas poisonous by inhalation)" and (2) the gases, liquids, and other materials defined as a "material poisonous by inhalation" by PHMSA's Hazardous Materials Regulations at 49 CFR 171.8. Under 49 CFR 171.8—

> "[m]aterial poisonous by inhalation" means—
>
> (1) A gas meeting the defining criteria in § 173.115(c) of this subchapter [*i.e.,* Division 2.3 (Gas poisonous by inhalation)] and assigned to Hazard Zone A, B, C, or D in accordance with § 173.116(a) of this subchapter;
>
> (2) A liquid (other than as a mist) meeting the defining criteria in § 173.132(a)(1)(iii) of this subchapter [regarding inhalation toxicity] and assigned to Hazard Zone A or B in accordance with § 173.133(a) of this subchapter; or
>
> (3) Any material identified as an inhalation hazard by a special provision in column 7 of the § 172.101 table.

Asphyxiants and PIH materials that are regularly carried by railroads include, for example, carbon dioxide, chlorine gas, and anhydrous ammonia. Such commodities should be easily identifiable for train crews, because a "rail car transporting any quantity of a hazardous material (including either a load or the residue [1] of one of these covered materials) must be placarded on each side and each end" pursuant to the requirements of 49 CFR 172.504 with

[1] "*Residue* means the hazardous material remaining in a packaging, including a tank car, after its contents have been unloaded to the maximum extent practicable and before the packaging is either refilled or cleaned of hazardous material and purged to remove any hazardous vapors." 49 CFR 171.8.

certain specified placards. A car containing a Class 2, Division 2.1 material must have "FLAMMABLE GAS" placards. *See* 49 CFR 172.532. Class 2, Division 2.2 materials must have "NON–FLAMMABLE GAS" placards. *See* 49 CFR 172.528. A car transporting a Class 2, Division 2.3 material, must have "POISON GAS" placards. *See* 49 CFR 172.540. Meanwhile, a car carrying any of the subset of Class 6, Division 6.1 materials that is a "material poisonous by inhalation" must have "POISON INHALATION HAZARD" placards, except that "[f]or domestic transportation, a POISON INHALATION HAZARD placard is not required on a transport vehicle [including a rail car] or freight container that is already placarded with the POISON GAS placard." [2] *See* 49 CFR 172.555 and 49 CFR 172.504(f)(8). In summary, when a train crewmember observes a car placarded FLAMMABLE GAS, NON–FLAMMABLE GAS, POISON GAS, or POISON INHALATION HAZARD while the car is part of his or her train, the crewmember will know that EEBAs must be provided in the locomotive cab prior to the train beginning its movements.

III. Accident History

The historical data suggest that crew injuries and fatalities related to the catastrophic release of a rail shipment (*i.e.,* release of all or nearly all of a rail shipment, usually a loaded rail tank car or a placarded empty rail tank car, which contains a residue of the original shipment) of an asphyxiant or a PIH material are rare; however, such incidents have the potential to be deadly. For example, in the 42 years between 1965 (the year for which the earliest data are available) and 2006, there were approximately 2.2 million tank car shipments of chlorine. Out of these 2.2 million tank car shipments, there were only 788 accidents (0.00036 of all tank car chlorine shipments), 11 instances where there was catastrophic loss (*i.e.,* a loss of all or nearly all) of the chlorine lading (0.000005 of all tank car chlorine shipments), and 4 of these incidents resulted in fatalities (0.0000018 of all tank car chlorine shipments). *See* Written Statement of Joseph H. Boardman, Administrator, FRA, before the Committee on Transportation and Infrastructure, United States House of Representatives, June 13, 2006. Of the four incidents with fatalities, two resulted in the fatalities of crewmembers. One occurred in Macdona, Texas in June of 2004, and the other in Graniteville, South Carolina in January of 2005. These two fatalities involving crewmembers will be discussed below.

While even one death due to inhalation of an asphyxiant or a PIH material is too many, it is important to recognize that there have been dramatic improvements in the safety performance of rail operations since 1970. Accidents and casualty rates declined significantly during the 1970s, 1980s, and 1990s, with the past decade experiencing a leveling off of safety performance. These improvements in rail safety have resulted in the safer transportation of hazardous materials. The AAR has found a significant decrease in hazardous material incidents since 1980. According to AAR, hazardous material incident release rates are down 71 percent from 1980 and 56 percent from 1990, while hazardous material accident rates are down 90 percent from 1980 and 49 percent from 1990.[3] Not surprisingly, there also has been a corresponding reduction in the number of accidents with a hazardous material release. Such incidents have fallen 76 percent since 1980 and 17 percent since 1990. *See* Robert Fronczak, "U.S. Railroad Safety Statistics and Trends," AAR, May 2005.

FRA has analyzed the casualty data in its possession for on-duty employees in train and engine service (T&E) for the 10-year period from 1997 to 2006. During this time frame, a total of 25,941 non-passenger T&E on-duty casualties were reported, with 25,904 injuries and 37 fatalities. Table 1, below, examines those casualties resulting from collisions, derailments, and inhalation.

TABLE 1—NON-PASSENGER T&E EMPLOYEES—ON-DUTY CASUALTIES

[Source: FRA Safety Database—4.02 Casualty Data Reports]

Reporting year	Total casualties	Collision casualties	Collision fatalities	Derailment casualties	Derailment fatalities	Inhalation casualties	Inhalation fatalities
1997	2,834	96	8	38	0	58	0
1998	3,004	86	1	37	0	86	0
1999	3,211	76	7	54	1	73	0
2000	3,169	82	2	44	0	63	0
2001	2,872	86	4	50	0	68	0
2002	2,405	84	2	46	1	50	0
2003	2,281	75	2	44	1	63	0
2004	2,211	73	5	55	0	70	1
2005	2,102	84	0	27	0	69	1
2006	1,852	60	1	28	0	64	0
10-year Average per Year	2,594.1	80.2	3.2	42.3	0.3	66.4	0.2

The table includes casualties from derailments and collisions because derailments and collisions represent the most likely events leading to a catastrophic hazardous material release with T&E personnel present. Similarly, these events also have the most potential for property damage or injury or death to members of the general public caused by the release of a hazardous material that renders an unprotected crew ineffective. As can be seen from the table, the overwhelming majority of injuries to T&E personnel are not attributable to the causes of inhalation, collision, or derailment. The 10-year average of about 193 T&E casualties (injured and killed) per year

[2] Class 6, Division 6.1 materials other than material poisonous by inhalation must be placarded "POISON." *See* 49 CFR 172.504, Table 2, and section on placard design at 49 CFR 172.554.

[3] AAR data are used here because they permit longer term historical comparison of the numbers and rates of hazardous materials accidents and hazardous material incidents involving rail transportation of hazardous material than do the analogous data currently available from FRA's sister agency, PHMSA. PHMSA changed the definitions of what must be reported to that agency on those matters after the year 1998. As a result, PHMSA's data on hazardous materials accidents and incidents are not necessarily homogenous in nature and do not permit ready comparisons over as long a period of time.

due to inhalation, collision or derailment [80.2 + 3.2 + 42.3 + 0.3 + 66.4 + 0.2] represents just 7.4 percent of the average number of 2,594 T&E on-duty casualties per year during the same period. When just inhalation casualties are considered [66.4 + 0.2], the number falls to 2.6 percent. Moreover, based on a review of the inhalation casualty data available to FRA, it appears that a large majority of the inhalation casualties identified involve (a) employees that were not performing train operations or (b) environments that fall outside the congressional mandate.

Moreover, the information compiled in Table 1 suggests that collisions are the most life-threatening event experienced by T&E employees. Of the 37 T&E fatalities identified in the table, 86.4 percent (32 out of 37) involved a collision. This compares to 8.1 percent (3 out of 37) involving a derailment. Only 5.4 percent (2 out of 37) of T&E employee fatalities resulted from inhalation.

To get a better understanding about the relative danger of inhalation fatalities, the number of deaths resulting from inhalation of a hazardous material can also be compared to the average yearly train-miles and number of hazardous material shipments. For the period 1997–2006, the average for annual train-miles was 734.6 million. The 2 on-duty T&E employee deaths resulting from the inhalation of hazardous material therefore can be expressed as a rate of 1 death per 3.67 billion train-miles. Over the same period, this equates to 1 fatality per 5.7 million shipments of the top 125 hazardous materials. *See* "Annual Report of Hazardous Materials Transported by Rail, Calendar Year 2006," AAR, Bureau of Explosives, Report BOE 06–1, October 2007. The two inhalation fatalities in Table 1 represent the only known T&E employee deaths resulting from a hazardous material release. These inhalation casualties, both involving the release of chlorine, arose out of two separate incidents. The first occurred in 2004 near Macdona, Texas. The second occurred in 2005 in Graniteville, South Carolina. Each is discussed in turn.

The incident near Macdona, Texas occurred on June 28, 2004. "A westbound Union Pacific Railroad (UP) freight train traveling on the same main line track as an eastbound BNSF Railway Company (BNSF) freight train struck the midpoint of the 123-car BNSF train as the eastbound train was leaving the main line to enter a parallel siding. The accident occurred at the west end of the rail siding at Macdona, Texas, on the UP's San Antonio Service Unit. The collision derailed the 4 locomotive units and the first 19 cars of the UP train as well as 17 cars of the BNSF train. As a result of the derailment and pileup of railcars, the 16th car of the UP train, a pressure tank car loaded with liquefied chlorine, was punctured. Chlorine escaping from the punctured car immediately vaporized into a cloud of chlorine gas that engulfed the accident area to a radius of at least 700 feet before drifting away from the site. Three persons, including the conductor of the UP train and two local residents, died as a result of chlorine gas inhalation." *See* NTSB's report on the accident, "Collision of Union Pacific Railroad Train MHOTU–23 With BNSF Railway Company Train MEAP–TUL–126–D With Subsequent Derailment and Hazardous Materials Release, Macdona, Texas, June 28, 2004," Railroad Accident Report NTSB/RAR–06/03, Washington, DC.

The Graniteville, South Carolina incident occurred on January 6, 2005, when a NS freight train encountered a switch that had been improperly lined. The improperly lined switch diverted the train from the main line onto an industry track. Once on the industry track, the train struck an unoccupied, parked train. The collision resulted in the derailment of two locomotives and 16 freight cars on the diverted train, as well as the locomotive and one of the two cars of the parked train. There were three tank cars containing chlorine among the derailed cars on the diverted train. One of the cars containing chlorine was breached causing a release of chlorine gas. As a result, "the train engineer and eight other people died as a result of chlorine gas inhalation." *See* NTSB's report on the accident, "Collision of Norfolk Southern Freight Train 192 With Standing Norfolk Southern Local Train P22 With Subsequent Hazardous Materials Release at Graniteville, South Carolina, January 6, 2005," Railroad Accident Report NTSB RAR–05/04, Washington, DC.

Following the Macdona and Graniteville fatalities, the NTSB issued a recommendation that FRA—

> [d]etermine the most effective methods of providing emergency escape breathing apparatus for all crewmembers on freight trains carrying hazardous materials that would pose an inhalation hazard in the event of unintentional release, and then require railroads to provide these breathing apparatus to their crewmembers along with appropriate training.

(R–05–17). FRA responded to the NTSB recommendation by initiating a study of potential emergency escape breathing devices for use by crewmembers on freight trains transporting hazardous material that would pose an inhalation hazard if released.

IV. FRA–Sponsored Study

Commissioned by FRA and in cooperation with the railroad industry and railroad labor, the study of EEBAs compiled factual information, performed technical, risk, and economic analyses, and made recommendations on "the use of [EEBAs] by train crews who may have exposure to hazardous materials [that] would pose an inhalation hazard in the event of unintentional release." *See* "Emergency Escape Breathing Apparatus," FRA Office of Research and Development, Final Report, May 2009, which is posted at *http://www.fra.dot.gov/downloads/Research/ord0911.pdf* and included in the docket of this rulemaking. Part of this preamble to the NPRM draws from the study; however, on further consideration of the issues involved and on further consultation with representatives of the railroad industry and railroad labor (as discussed under "Section V," below), FRA has come to different conclusions on a number of matters. These matters include the minimum breathing time that EEBAs should provide, the analysis of different methods of distribution of the devices, and the costs and benefits of various EEBA alternatives.

V. Selection of the Appropriate EEBA by Railroads

As previously discussed, section 413 of the RSIA requires the Secretary to promulgate regulations requiring railroad carriers—

> to provide emergency escape breathing apparatus suitable to provide head and neck coverage with respiratory protection for all crewmembers in locomotive cabs on freight trains carrying hazardous materials that would pose an inhalation hazard in the event of release. * * *

49 U.S.C. 20166.

EEBAs fall within the broad category of "respirators." FRA has examined EEBA technologies to determine the type of EEBA best suited to satisfy this rulemaking mandate of the RSIA. Respirators generally fall into two categories: Air-purifying respirators and atmosphere-supplying respirators. Air-purifying respirators remove specific air contaminants by passing ambient air through an air-purifying element, such as an air-purifying filter, cartridge, or canister. Atmosphere-supplying respirators supply breathing air from a source independent from the ambient atmosphere. Types of atmosphere-supplying respirators include airline supplied-air respirators and SCBA units.

Based on the factors presented, FRA proposes requiring an atmosphere-supplying respirator that provides adequate head and neck protection as well as giving sufficient time for its user to escape an IDLH atmosphere.

Two main organizations have promulgated performance standards governing the use and maintenance of respirators. NIOSH, located within the Centers for Disease Control and Prevention of the U.S. Department of Health and Human Services, has worked with government and industry partners to develop certification standards for respirators. The NIOSH regulations codified at 42 CFR part 84 establish the requirements for NIOSH-certification of respirator equipment.[4] NIOSH also has developed information on safe levels of exposure to toxic materials and harmful physical agents and issued recommendations for respirator use.

A second entity that has established performance standards for respirator maintenance and use is the ISO. The ISO is a network of national standards institutes in 162 countries, including the United States through the American National Standards Institute. ISO develops international standards to assist in ensuring the safe performance of a wide range of EEBAs. While the ISO is not a government organization, it works to establish performance standards that have scientific and technological bases while ensuring that products falling within its purview are safe and reliable for consumers. The organization has promulgated ISO 23269–1:2008(E), "Ships and marine technology—Breathing apparatus for ships—Part 1: Emergency escape breathing devices (EEBD) for shipboard use." While ISO 23269–1 is directed towards EEBAs on ships and marine technology, FRA anticipates that this ISO standard can be reasonably transferred to the railroad environment. ISO 23269–1 establishes performance specifications for EEBAs that are intended to provide air or oxygen to a user to facilitate escape from accommodation and machinery spaces, similar to a locomotive cab, with a hazardous atmosphere. However, FRA believes that the minimum breathing capacity allowed by ISO 23269–1, which is 10 minutes, is insufficient for the anticipated use in a railroad environment. As a result, this NPRM proposes a minimum breathing capacity of 15 minutes, which would be equally applicable to EEBAs certified under the requirements of NIOSH. *See* 42 CFR part 84, or ISO 23269–1.

Additionally, OSHA, located within the U.S. Department of Labor, is responsible for developing and enforcing general workplace safety and health regulations related to respiratory protection. In furtherance of this responsibility, OSHA has promulgated extensive regulations governing the use of respirators of all types, including emergency escape devices. *See* 29 CFR 1910.134. In drafting this NPRM, FRA has considered the requirements of both Federal agencies as well as ISO to assist in determining the possible types of EEBAs that may be used by railroad employees whom FRA proposes to cover under this rule.

A comprehensive selection process for respirators has been developed by NIOSH. *See http://www.cdc.gov/niosh/docs/2005-100/pdfs/05-100.pdf.* For purposes of EEBAs deployed in the railroad environment, the two major NIOSH factors to consider in selecting a respirator are to determine whether the respirator is intended for (1) use in an oxygen-deficient atmosphere (*i.e.,* less than 19.5 percent oxygen (O_2)) and (2) use in entry into, or escape from, unknown or IDLH atmospheres (*e.g.,* an emergency situation).

FRA's investigation into the Graniteville accident found that the concentration of the toxic chlorine cloud over the accident site area was estimated to be approximately 2,000 ppm. *See* R. L. Buckley, Detailed Numerical Simulation of the Graniteville Train Collision, Savannah River National Laboratory, Report WSRC–MS–2005–00635 October 2005. OSHA classifies chlorine as having an IDLH level of 10 ppm. FRA roughly estimated the distance between the final resting spot of the breached chlorine tank car in relation to the train crew, as well as the wind speed and size of breach, to determine that the chlorine plume reached the crew within two minutes. The coroner's report on the eight civilian fatalities in the Graniteville incident indicated that the primary cause of death was asphyxia, or lack of oxygen. The coroner listed the engineer's primary cause of death as lactic acidosis. Exposure to chlorine gas was attributed as the secondary cause of all deaths in the incident. Under the circumstances presented, it appears that both NIOSH selection criteria were met. There may have been an oxygen-deficient atmosphere, and there certainly was toxic-gas concentration exceeding IDLH levels.

The Graniteville accident demonstrated that railroad hazardous material incidents (meaning collision, derailment, or other train accident) involving the catastrophic loss of certain asphyxiants and PIH materials have the potential to release IDLH concentrations and/or displace oxygen very quickly without the crew's knowledge. In such circumstances, the crew may need to respond to an incident by donning their EEBAs even before assessing the damage caused by an accident. Considering the variables associated with the transportation of hazardous materials via rail and the potential hazards that exist, FRA proposes, based on the NIOSH selection criteria, to require railroad to provide an escape-type respirator.

The single function of escape-type EEBAs is to allow sufficient time for an individual working in a normally safe environment to escape from suddenly occurring respiratory hazards. Given this function, the selection of the device does not rely on assigned protection factors designated by OSHA.[5] Instead, these escape-type respirators are selected based on a consideration of the time needed to escape in the event of IDLH or oxygen-deficient conditions.

Pursuant to statutory requirements, FRA's proposed regulation would require the provision of a device with head and neck coverage. Escape-type SCBA devices are commonly used with full-face pieces or hoods. Such devices are usually rated from 3- to 60-minute units depending on the supply of air.

The following two types of atmosphere-supplying SCBA would satisfy the protection requirements of this proposed regulation:

- Open Circuit SCBA. These are typically classified as positive pressure, open circuit systems whereby the user receives (inhales) clean air with 21 percent O_2 from a compressed air cylinder worn with a harness on the back. The user's exhaled breath contains significant amounts (15 percent) of unused oxygen that is vented to atmosphere. Because much of the user's exhaled breath vents to atmosphere, the size of open circuit systems is larger than closed circuit systems. Open

[4] As of the date of publication for this NPRM, NIOSH is in the process of amending its regulations in 42 CFR part 84—subpart H, which are applicable to closed circuit respirators. *See* 73 FR 75207, December 10, 2008, re Docket No. HHS–OS–2009–0025 at *http://www.regulations.gov*. The proposed NIOSH regulations would be applicable to mine workers, but NIOSH provides that once the final rule is published it would be used to certify respirators in other work environments where escape respirators are supplied. *See also* 74 FR 23815, May 21, 2009, which reopened the comment period until October 9, 2009.

[5] "Assigned protection factor" means the level of safety that a respirator or a class of respirators is expected to provide to employees. Assigned protection factors were developed by OSHA to designate to employers the proper type of device that is required in selecting a respirator. According to OSHA, assigned protection factors are not applicable to respirators used solely for escape.

circuit SCBA systems may employ full face masks or hoods and typically require an airtight seal against the head, face, or aural/nasal area.

• Rebreathers. These can be positive-pressure or negative-pressure systems. Classified as closed circuit O_2 systems, re-breathers perform as their name implies. The user re-breathes his or her breath. A chemical scrubber removes the carbon dioxide (CO_2) from the user's breath and makes up metabolized O_2 from a small bottle of compressed 100-percent O_2. Because the user is re-breathing his or her exhaled air containing 15 percent oxygen, a re-breather is four times more efficient than an open circuit system. As a result, such systems are capable of either lasting much longer than open circuit systems (if size were comparable) or providing the same breathing duration as an open circuit system but in a smaller package. Re-breathers may be employed with full-face masks or hoods. Negative pressure re-breathers do not require a tight seal.

First responders (such as firefighters) commonly use open circuit positive pressure SCBA systems for entering the scene of an emergency event. However, such devices may not be best situated to the railroad environment. In addition to being heavy and cumbersome from incorporating a large compressed air cylinder mounted to a harness, they also commonly incorporate use of a full-face piece. Depending on the program developed by each railroad, the incorporation of a full-face piece may be a logistically and economically difficult undertaking. To be effective, a full-face piece requires an airtight seal around the user's face, which means that each user must be personally fitted for the device. It also means the user must be cleanly shaven or otherwise free of excessive facial hair. The enforcement of such a requirement would be difficult at best.

FRA believes that hoods provide a useful alternative to full-face masks while protecting the face and neck. Hoods are universal fitting devices and can be used with open and closed circuit SCBAs. Because they are universal fitting, hoods do not require personally fitting the user, and hoods operate efficiently regardless of most eyewear, facial features, or hair. Significantly, hoods also allow the wearer to communicate while using the SCBA.

Experience has shown that a plume of hazardous material can travel quickly. As a result, it is vitally important that the train crew has adequate breathing time available to allow each member to move a significant distance from the site while protected from the ambient atmosphere. Because such incidents will often result from a collision, as was the case in Macdona and Graniteville, consideration should be given to those situations where additional time may be used to assist or extricate fellow crewmembers that may be hurt or trapped. For example, if it takes 10 minutes to assist a fellow crewmember and each is wearing a 15-minute open circuit respirator, each crewmember is left with 5 minutes to escape from any plume that may be present. Moreover, often individuals will have a tendency to over-breathe in stressful situations, which will shorten the breathing time available in a respirator. In selecting an EEBA with sufficient breathing time, each railroad should take into consideration these factors and others that contribute to the "Murphy's Law" effects of accidents such as an incident occurring at night or in tight terrain. As a result, FRA proposes a 15-minute minimum breathing capacity for an EEBA provided to a covered employee. Further, FRA encourages railroads to consider EEBAs with a longer breathing capacity, to provide an extra margin for escape under stressful circumstances.

VI. Provision of EEBAs to Covered Employees

The proposed regulation does not specify a particular method by which a railroad is to provide EEBAs to the employees that Congress intended to cover. *See* discussion of covered employees at Section-by-Section Analysis of proposed §§ 227.201 and 227.211, below. FRA recognizes that there are differing methods for effectively distributing suitable EEBAs among a railroad's covered employees or its locomotive fleet or both. Each of these options has advantages and disadvantages. Given these factors, FRA believes that it is best to allow each railroad to choose the method of distribution that works for it as long as—(1) covered employees are provided with a suitable device while they are in the locomotive cab of a freight train transporting an asphyxiant or a PIH material and (2) transportation of a covered hazardous material is not unduly delayed, particularly where the covered train (or a locomotive intended to be used to haul a covered train) is interchanged from one railroad to another. *See V. Information and Recommendations Provided by the Railroad Industry and Railroad Labor Organizations after the Study,* for relevant remarks.

Under the proposed regulation, EEBAs may be treated as part of an employee's permanently issued items, similar to eye protection, radios, and lanterns. This would allow railroads to permanently issue an EEBA to each potentially covered employee (*e.g.,* for a freight railroad that regularly hauls one or more asphyxiants or PIH materials, possibly all of its train employees). The device would be in the user's control at all times, and each individual would be responsible for having the device in his or her possession. The carrier would still be responsible to ensure the state of the equipment through an inspection program; however, the company would be relieved of most of the responsibilities for EEBA management. Theoretically, this option would tend to result in better cared for equipment and lower replacement costs. Moreover, personal assignment allows for customization of the EEBA. Negative aspects of treating EEBAs as a permanently issued item include difficulty in monitoring the EEBA status and ensuring that the EEBA is with the user at all times that it is required to be available. Additionally, permanently issuing the EEBA would add to an already lengthy list of items expected to be carried by train employees.

Alternatively, EEBAs may also be permanently assigned to an individual as a dedicated personal item that would be issued at the start of each shift and recovered at the end of each shift as part of the clock-in/clock-out process. This method allows for customization and allows the EEBA to be with the user at all times that the user is on duty, while supporting centralized inspection and maintenance. However, the railroad may experience greater costs due to the increased size of its EEBA inventory since all train employees that have the potential to work in the locomotive cab of a freight train transporting an asphyxiant or a PIH material would require stocked EEBAs. This alternative may also create difficulties in the provision of EEBAs if the train employees who must have access to the EEBAs have more than one on-duty location.

The third option is to treat EEBAs as "pool" items not assigned to a specific individual that are issued randomly at the start of each shift and recovered at the end of each shift as part of the clock-in/clock-out process. This option supports centralized inspection and maintenance while minimizing number of EEBAs required. Likewise, the EEBA would be with the user throughout his or her entire shift. However, this system may have hidden costs. The railroad will likely lose the benefits of "ownership" if EEBAs are treated as common property. This system also limits the railroad to use of generic, one-

size-fits-all EEBAs and increases the management burden for tracking and recovery of EEBAs.

A fourth option would be to have EEBAs permanently mounted in each locomotive cab in the railroad's fleet. This method would ensure that consists transported by the railroad that include an asphyxiant or a PIH material are always adequately equipped, while supporting centralized inspection and maintenance. The negative aspects of permanently mounting the EEBA selected by the railroad in the cabs of the railroad's locomotive fleet include the increased size of the railroad's EEBA inventory if non-covered consists would transport the EEBAs, increased management burden for tracking/recovery, increased management burden for item inspection and maintenance, potential lack of flexibility as EEBAs must be provided for worst-case crewing (including possible supernumerary personnel such as deadheading employees), and unavailability of customized EEBAs.

As will be discussed in *V. Information and Recommendations Provided by the Railroad Industry and Railroad Labor Organizations After the Study,* AAR has proposed that Class I railroads interchanging locomotives with each other provide the same type of EEBA using the method of equipping the locomotive, which would expedite interchange between two Class I railroads. However, the option of permanently mounting within each locomotive an EEBA selected by that railroad for its program could create delays at interchange if locomotives from nonparticipating railroads are offered in interchange to Class I railroads to haul covered trains. The delay could occur if the nonparticipating railroad delivers a locomotive in interchange that either lacks an EEBA of any kind or that has an EEBA that does not conform to the type specified under the Class I railroad's general EEBA program under proposed § 227.211.

EEBAs also could be temporarily mounted in the locomotive cab as the train containing a shipment of asphyxiant or PIH material is made up. This option would help to minimize the number of EEBAs required, while ensuring that each consist containing an asphyxiant or a PIH material is appropriately equipped. It would also allow the railroad to cater efficiently to differing crew sizes. Problems with this method include increased management burden for the initial issue of EEBAs to the consist, increased management burden for tracking/recovery, increased management burden for item inspection and maintenance, and unavailability of customized EEBAs.

FRA recognizes that these are but a few of the numerous options for the provision of EEBAs, each having its own costs and benefits. Any of these options (or combination of these options), including options that have not been discussed above, would be acceptable under the proposed regulation as long as a suitable EEBA is provided by the railroad to each covered employee while he or she is in the locomotive cab of a covered train without unduly delaying the transportation of covered hazardous materials via rail.

VII. Information and Recommendations Provided by the Railroad Industry and Railroad Labor Organizations After the Study

As previously mentioned, representatives of both the railroad industry and railroad labor cooperated with the FRA-sponsored study on the feasibility of providing EEBAs to train crews, the report of which was published in May 2009. More recently, the AAR, the UTU, and the BLET have exchanged information and ideas with FRA on issues related to this rulemaking.

In July 2009, representatives of the AAR briefed FRA with information on the AAR's exploration of alternative ways by which the rulemaking mandate under section 413 of the RSIA might be carried out. The AAR has also offered recommendations to FRA on issues related to this rulemaking, including the type of EEBA and the mode of providing it that FRA should accept as satisfying the statutory mandate.

Subsequently, in a letter to FRA dated January 13, 2010, which has been attached as Appendix A to this NPRM, an AAR representative said that—

> the railroads' Industrial Hygienists have finalized a specification for a device that meets the objective of the RSIA which is to provide for escape from the area where a release of hazardous materials has occurred that may pose an inhalation hazard. One of the important features of this specification is the provision for the device to have a 15 minute functional rating. Investigations and studies by the railroads' Industrial Hygienists have found that the area of destruction following a release is such that 15 minutes is a more than adequate time period to escape the area. Requiring a device with a greater capacity would result in one that is larger and heavier than called for in this specification. Real estate in the locomotive cab is already at a premium. It is problematic for the railroads to install brackets or holders for the [emergency escape breathing device] called for in this specification. Requiring a larger device in the regulation would complicate this issue by taking more space. Similarly, requiring a device with a greater functional rating would necessitate crew members to manage a device easily twice the size and weight of the six (6) pound unit preferred by the Industrial Hygienists.

Further, the letter said that the specification referenced earlier, "M–1005, is presently being worked through the approval process for AAR Standards. It is this specification that we recommend FRA include by reference in the forthcoming regulation." A copy of the January 20, 2010, draft of that specification as provided by the AAR is at Appendix B to this NPRM.

The draft specification would establish guidelines for vendors of EEBAs that would be used by Class I railroads. It requires that the EEBA provided by the vendor be certified by NIOSH as a "Self-Contained Breathing Apparatus (SCBA)—Escape Only," or comply with some other "National/International standard such as ISO 23269–1:2007(E): Emergency Escape Breathing Device (EEBD)."[6] AAR's draft specification allows for EEBAs that are either Closed Circuit Escape Respirators or Open Circuit Escape Respirators. Each EEBA must have at least a 15-minute approval rating, meaning that the device must function for at least 15 minutes during 3-mph treadmill tests and 30 minutes for stationary tests.[7] The materials used in each EEBA must be resistant to IDLH levels of gaseous chlorine, anhydrous ammonia, and other toxic inhalation hazard (TIH) substances. Additionally, each EEBA shall provide respiratory, head, and neck protection when tested at challenge concentrations of 10,000 ppm anhydrous ammonia and chlorine gas with a hood that is sufficient in size to cover head and neck of larger than average head size. To facilitate transferability, under the proposed specification, the "escape system must interchange with all Class [I] railroads." *Id.*

AAR's draft specification also establishes requirements for mounting EEBAs on locomotives. The EEBAs and the mounting devices must be sufficiently small (5" deep by 8" wide by 10" high) and light (6 lbs. or less), so that they can be easily mounted in a locomotive cab and be easily accessible

[6] FRA believes that AAR's reference to ISO 23269–1:2007(E) is a typographical error made either by AAR or the publisher. FRA has been informed that the first edition of ISO 23269–1 was published in 2008, and that there is no 2007 version of this standard.

[7] AAR's draft specification provides an option for compliance by following ISO 23269–1. Yet, it also requires that the escape device "function for at least 15 minutes." FRA recommends that AAR clarify the apparent inconsistency in its draft specification to indicate that the provision of ISO 23269–1 that calls for a 10-minute minimum does not apply.

in an emergency situation. Each wall mount case must be bright safety orange and contain a photoluminescent label marked with the text stating "Emergency Escape Breathing Device." The draft specification further requires that the mount device contain a clear window that allows a train employee to easily view the oxygen gauge. For security purposes, the draft specification provides that the mount device shall contain a time-stamped seal and plastic tamper tie that is easily identifiable when broken. Additionally, each EEBA must have a small radio frequency indicator (RFID) tag that is attached to the EEBA and faces outward while in the mount device, which facilitates the use of an RFID handheld reader during inspections. Moreover, AAR's draft specification requires that the EEBA provided by a vendor to any Class I railroad must have undergone accelerated random vibration test using a typical locomotive cab profile and there must be evidence of impact and vibration resistance resulting from such testing. Assuming a 50-percent duty life cycle, the device must have a 15-year service life based on escape device performance and mounting device structural integrity tests. Finally, the proposed specification requires that each EEBA be attachable to a train employee's belt and that the EEBA not be activated solely by its removal from wall mount case.

Lastly, AAR's draft specification requires training support. The training shall include a video of various locomotive models and video portions including each Class I railroad. Subjects that must be covered during instruction include discussion about the proper techniques for donning the EEBA, requirements for maintenance, requirements for inspections, typical scenarios where an EEBA will be used, and requirements for training. The draft specification further requires seminars that allow train service trainers to be involved in hands-on and face-to-face "train-the-trainer" situations.

Additionally, FRA representatives also met with UTU and BLET representatives on March 31, 2010 to brief FRA on issues related to the provision of EEBAs. AAR was also in attendance at this meeting. Prior to the meeting, UTU provided a discussion document, which is Appendix C to this NPRM, outlining some of its concerns about the provision of EEBAs on locomotives. UTU felt that EEBAs should be "placed on all occupied locomotives which operate over a corridor where freight trains carry hazardous materials that pose an inhalation hazard in the event of a release." Under UTU's recommendation, each occupied locomotive would be required to have working EEBAs—even if the occupied locomotive is not part of a train carrying asphyxiants or PIH materials—as long the locomotive is operating over a rail line that carries such materials.

During the March 31st meeting, UTU indicated that it opposed issuing EEBAs as personal items. UTU felt that adding an additional item to each train employee's required personal equipment would unnecessarily burden crewmembers. UTU was concerned with not only the added weight, but also the extra responsibility for care and maintenance that would fall to train employees in the event that EEBAs are provided as personal equipment. It contended that railroads are in a better position than the employees to maintain the devices and stated that treating EEBAs as personal equipment would not satisfy the intent of Congress in passing the legislation.

Finally, UTU stressed that there must be sufficient training of train employees in the use of EEBAs. Such training would ensure that train employees would know how to use EEBAs if presented with a situation in the field where their use was required. UTU expressed a strong desire for regular, hands-on training with devices selected by the railroads to achieve these ends.

FRA seeks comment on AAR's draft specification as well as UTU's discussion document. Specifically, FRA welcomes comments about whether it would be appropriate to incorporate a specification of the type that AAR has drafted into the final rule and whether it would be advisable for FRA to alter its proposed regulation based on either the AAR specification or the UTU discussion document.

VIII. Section-by-Section Analysis

Part 227—Occupational Safety and Health in the Locomotive Cab

FRA proposes to change the name of the part from "OCCUPATIONAL NOISE EXPOSURE" to "OCCUPATIONAL SAFETY AND HEALTH IN THE LOCOMOTIVE CAB" in order to reflect the broader subject matter of the part. Previously, part 227 contained regulations related only to dangers from occupational noise exposure. FRA concluded that part 227 was the most natural place to put the proposed regulations related to the provision of EEBAs because the occupational noise regulations and the proposed EEBA regulations both concern dangers to the occupational safety and health of locomotive cab occupants. However, the inclusion of the proposed EEBA regulations requires broader language to accurately capture the subject matter that would be covered in part 227.

Subpart A—General

Section 227.1 Purpose and Scope

FRA proposes to amend this section to reflect the expanded purpose and scope of this part.

Section 227.3 Applicability

FRA proposes amending this section so that paragraphs (a) and (b) apply to subpart B only and that the title mentioned, "Associate Administrator for Safety," is updated to reflect the current title, "Associate Administrator for Railroad Safety/Chief Safety Officer." New paragraphs (c) and (d) define the types of railroad operations to be covered by proposed subpart C. In particular, proposed subpart C applies to a railroad that transports an in-service freight train that carries an asphyxiant or a PIH material, including a residue of such asphyxiant or PIH material, on track that is part of the general railroad system of transportation. *See* 49 CFR part 209, appendix A. If a railroad does not haul such a material on the general system, it is not subject to this subpart. It should be noted that, with some exceptions, common carriers by railroad have a "common carrier" obligation to accept for rail transportation an asphyxiant or a PIH material if it is properly prepared for transportation. If a railroad accepts and transports a tank car containing a load or residue of an asphyxiant or a PIH material in an in-service freight train, even if the railroad has never done so before, the railroad would become subject to this rule. FRA realizes that triggering the applicability of this rule upon the company's first transporting of an asphyxiant or a PIH material in a freight train could delay the transportation of such material if the company did not voluntarily take the steps required by the rule (*e.g.,* preparation of general EEBA program, procurement and distribution of EEBAs, and instruction of employees in the program) in advance. Further, a delay related to compliance with this proposed rule could conflict with the railroad's duty to expedite the transportation of hazardous material, pursuant to the Hazardous Materials Regulations at 49 CFR 174.14. Accordingly, FRA seeks comment on this aspect of the proposal.

Section 227.5 Definitions

The proposed rulemaking would amend this section to add definitions for key terms used in subpart C. The terms

defined are set forth alphabetically. FRA intends these definitions to clarify the meaning of the terms for purposes of this part. Many of these definitions have been taken from the regulations issued by OSHA and NIOSH and are widely used by safety and health professionals, such as the definition of "immediately dangerous to life or health (IDLH)." Additionally, FRA defines "asphyxiant or PIH material" to clarify the universe of materials carried by freight trains for which EEBAs must be provided.

Section 227.7 Preemptive Effect

FRA proposes deleting this section and reserving it for use for two reasons. First, the section is unnecessary because it is duplicative of statutory law at 49 U.S.C. 20106 and case law. Second, the section is incomplete because it omits reference to the preemptive effect of the former LBIA, repealed and recodified at 49 U.S.C. 20701–20703, *see* Public Law 103–272 (July 5, 1994), which has been held to preempt the entire field of locomotive safety. *See Napier* v. *Atlantic Coast Line R.R.,* 272 U.S. 605, 613; 47 S.Ct. 207, 210 (1926). *See* "Federalism," below.

Section 227.15 Information Collection

FRA proposes to amend this section to note the provisions of this part, including subpart C, that have been reviewed and approved by the Office of Management and Budget (OMB) for compliance with the Paperwork Reduction Act of 1995. *See* 44 U.S.C. 3501 *et seq.*

Subpart B—Occupational Noise Exposure for Railroad Operating Employees

FRA proposes a set of minor corrections to this subpart. The term "Class 1" is removed wherever it appears and replaced with the corrected term "Class I". The incorrect term appears in, for example, § 227.103(a)(1).

Subpart C—Emergency Escape Breathing Apparatus Standards

Section 227.201 Criteria for Requiring Availability of EEBAs in the Locomotive Cab

Proposed § 227.201(a)(1) requires that an EEBA be provided by a railroad to each of its train employees, direct supervisors of train employees, deadheading employees, and other employees designated by the railroad in writing and at the discretion of the railroad who are required to work in or occupy the cab of the locomotive of one of its covered trains (*i.e.,* an in-service freight train that is transporting an asphyxiant or a PIH material). The EEBA provided must have been selected in accordance with the criteria in § 227.203. Moreover, the EEBA provided shall have been inspected and determined to be in proper working condition under § 227.207.

Paragraph (a)(2) proposed in this section prohibits utilizing a locomotive to transport an asphyxiant or a PIH material in an in-service freight train unless each of the employees identified in paragraph (a)(1) in the cab of the locomotive has access to an EEBA that was selected in accordance with § 227.203 and that has been inspected and is in proper working order pursuant to § 227.207. Paragraph (a)(2) makes clear that it is not enough for a railroad to merely issue an EEBA to an employee, *e.g.,* as a uniform item; the EEBA must be physically available to the employee in the cab of the covered train. For instance, it is not a defense to a violation of § 227.201(a)(2) that the railroad provided the EEBA to the employee and instructed the employee to have it while in the cab, but the employee lost or forgot it.

This proposed section also includes exceptions to its general requirements in paragraph (b). FRA has considered whether EEBAs should be required on intermodal trains that transport small quantities of asphyxiants and PIH materials. FRA proposes excluding intermodal trains from the requirements in this section. Railroads generally do not accept asphyxiants or PIH materials in intermodal shipments, and the risk of poisonous inhalation in the event of a release from an intermodal shipment is relatively low based on the quantities and packaging of materials carried by such trains. Therefore, there is not a substantial risk that the release of all or most of a shipment of an asphyxiant or a PIH material on an intermodal train would endanger the crew.

FRA is also aware that certain activities involving low-speed, intra-yard movements involve little potential exposure to the kinds of circumstances that this rule is intended to protect against. Employees who are involved in those activities, such as moving a locomotive coupled to a car or group of cars containing an asphyxiant or a PIH material within a locomotive maintenance facility, or who make incidental movements for the purpose of inspection or maintenance, are also exempted from coverage.

FRA considered exempting remote control operators (RCOs) who are not in the cab of a locomotive during the movement of an in-service freight train transporting an asphyxiant or a PIH material. FRA's concern was that an RCO who is on the ground and some distance away from the locomotive while the train is being moved normally would not be in a position to readily access the locomotive to don an EEBA in the event of a release. In such a circumstance, FRA would not want to encourage the RCO to move toward the locomotive cab to retrieve an EEBA that was provided according to a regulatory mandate when the best course of action is to immediately retreat to a safe distance away from the PIH material or asphyxiant. The AAR's January 13, 2010, letter also expresses this concern. However, FRA ultimately decided that it was unnecessary to provide a separate exclusion for RCO's conducting movements from the ground. An RCO is primarily on the ground when performing switching operations. These types of activities are not considered freight train movements under this part. Therefore, there would not be a requirement to provide EEBAs in the locomotive cab in such a circumstance. Alternatively, once switching operations have ceased and the crew is ready to leave the yard with an in-service freight train, FRA would expect the RCO to occupy the cab and ride in the locomotive from point A to point B. Once the RCO has entered the locomotive cab for this type of movement, the rationale for excluding RCOs ceases to exist, and FRA would expect the RCO to be provided an EEBA as a train employee who is occupying the locomotive cab if the movement of the in-service freight train includes transporting an asphyxiant or a PIH material.

It should be noted that the AAR's January 13, 2010 letter to FRA asserts that "there may not be a justified need for an [EEBA] in traditional operations involving Yard and Local Freight trains as well." The letter reasons that, like an RCO—

> a crewman may feel the need to walk through a product mist to the locomotive to obtain and apply the device rather than escaping to a nearby yard office without one. Therefore, Yard and Local Freight assignments should also be exempt from a requirement for [EEBAs].

The letter does not define "Yard and Local Freight trains." The proposed rule applies only to freight trains, which are defined as excluding "switching service," which is in turn defined as the classification of cars according to commodity or destination, assembling cars for train movements, changing the position of cars in order to load, unload, or weigh them, placing cars for repair or storage, and moving rail equipment in connection with work service does not constitute a train movement. FRA notes that yard limits sometimes cover a large

area and that a large amount of anhydrous ammonia is transported in freight trains by local crews. Accordingly, FRA has not proposed to exclude "Yard and Local Freight trains." FRA requests comment on these issues.

Finally, proposed paragraph (c) establishes that, notwithstanding the exceptions identified in § 227.201, any employee who is found to have willfully tampered with or vandalized an EEBA will be subject to subpart C for enforcement purposes. As a result, an employee to whom the railroad is not required to provide an EEBA may become subject to this subpart by vandalizing or willfully tampering with an EEBA. By proposing this paragraph, FRA intends to foreclose a loophole that otherwise would preclude FRA from pursuing enforcement actions against mechanical employees and other employees who may have access to EEBAs, but for whom the railroads are not required to provide a device by these regulations.

Section 227.203 Criteria for Selecting EEBAs

This proposed section provides the basis for selecting an EEBA. *See* general discussion at *III. Selecting an Appropriate EEBA,* above. The requirements for selection of EEBAs are based on the nature and extent of the potential hazard to be faced. To ensure that the EEBAs have met a standard set of testing criteria, NIOSH-certified (42 CFR part 84) or ISO-certified (ISO 23269–1:2008(E)) EEBAs, with 15-minute minimum breathing capacity are mandated. Among these EEBAs, the necessity to choose specific types of EEBAs that address the different asphyxiants and PIH materials carried by the railroad (or by locomotives interchanged by the railroad to another railroad), including their varying modes of toxicity and physical state, forces the selection of EEBA types that supply a breathable atmosphere to the wearer rather than types that simply filter out the toxic material.

Filtering EEBAs, even those as advanced as military-style gas masks, cannot provide protection from a simple asphyxiant gas such as carbon dioxide or liquefied petroleum gas since the presence of this type of gas in sufficient concentration displaces the oxygen in the atmosphere. Filtering EEBAs approved for protection against specific materials usually are not approved for others of different chemical characteristics. For example, chlorine-filtering EEBAs do not also protect against ammonia. Filtering EEBAs also generally have an upper concentration limit to their protective capabilities. None are approved for use in IDLH environments. The IDLH limit for chlorine is 10 ppm, while the IDLH limit for ammonia is 300 ppm. In a situation such as the accident at Graniteville, SC, the concentration of chlorine was estimated to be several hundred times higher.

Once the choice is forced to an atmosphere-supplying EEBA, the issues of useful life (how long a user under stress can breathe before consuming the limited air supply) and usability (*e.g.,* the ease of donning and the ability to function wearing the EEBA) are critical. Over-breathing is a phenomenon that occurs when a person under stress breathes at a rate that exceeds the supply capability of the EEBA. This has two major consequences. First, any leaks around the sealing surface of the respirator will allow the toxic materials in the atmosphere to enter the breathing space. This may result in anything from simple irritation to incapacitation. Second, the increased breathing rate consumes the limited supply of air more quickly than anticipated. To ensure that the EEBA provides adequate oxygen to allow train employees to extricate themselves from an IDLH atmosphere, FRA proposes that the EEBA have a minimum breathing capacity of 15 minutes. While this minimum may differ from that provided for by NIOSH and ISO, FRA considers a 15-minute minimum necessary to allow an opportunity to escape from an asphyxiant or a PIH material in the railroad environment. Specifically, FRA is concerned that the 10-minute minimum provided for in ISO 23269–1 would not be sufficient to safely escape from an asphyxiant or a PIH material that has been released, given the potential for rough terrain for a comparatively long distance, uncertainty concerning the location of the release, and the possibility that other employees may be incapacitated.

A related issue is that of user competence in donning such an EEBA properly before leaving the locomotive cab under accident conditions. Competence in this sense is meant to address whether, under severe stress and possibly suffering from injury, train employees will remember even to don the EEBA as well as how to do so properly. Anecdotal evidence from military experience in recent conflicts suggests that even soldiers who have trained repeatedly with chemical protective gear and EEBAs have difficulty under stressful conditions properly donning the EEBAs and other gear.

The remaining issues involve face and neck protection, particularly preventing the possibly highly irritating materials from reaching the eyes. The EEBA selected must provide a means of protecting a user's eyes to facilitate the ability of the user to escape. This issue relates to the function of the respirator sealing surface to keep contaminants out of the breathing space. Some respirators use an elastomeric surface to seal the respirator to the face of the user, covering from the forehead to the chin. Others use a hood with a clear window, or with the hood made out of completely clear plastic, and having a flexible seal around the user's neck to provide this protection. Either of these designs is capable of accommodating users who wear eyeglasses. Respirators with the elastomeric face seal encounter more difficulty in accommodating those users who have very large or very small or oddly shaped facial features, facial deformities, or beards. It is anticipated that the EEBAs selected will accommodate these issues by either custom fitting of individuals or using EEBAs with hoods as the face piece.

Section 227.205 Storage Facilities for EEBAs

This proposed section addresses the mandate in the RSIA that the rule require railroads to "provide convenient storage in each freight train locomotive to enable crewmembers to access such apparatus quickly." FRA has adapted the storage requirements promulgated by OSHA at 29 CFR 1910.134(h)(2) to this NPRM. The storage requirements enumerated should assist railroads in maintaining viable EEBAs while providing the railroads with flexibility in meeting the statutory mandate. However, there may be a necessity for variation from those requirements to permit the storage of an EEBA assigned to an employee in the employee's luggage if the locomotive already has a separate locomotive-mounted EEBA. This change would be based on the shortage of free space in the locomotive cab. FRA requests comments on this possible revision and how it would square with the stated requirements.

Section 227.207 Railroad's Program for Inspection, Maintenance, and Replacement of EEBAs; Requirements for Procedures

This proposed section requires each railroad to establish and carry out procedures intended to ensure that EEBAs required to be present in the locomotive cabs are fully functional. This section is adapted from OSHA's inspection documentation requirements. *See* 29 CFR 1910.134(h)(3)(iv). Since the

EEBAs selected may have differing requirements for inspection, maintenance, and replacement, this section is, for the most part, written as a general performance standard. However, minimum repair and adjustment requirements also have been adapted from OSHA's regulations. *See* 29 CFR 1910.134(h)(4).

Paragraph (b) of the section proposes a requirement that railroads create and maintain pre-trip and periodic inspection records, and retain these records for one year. Paragraph (d) requires railroads to create and maintain an accurate record of all turn-ins, maintenance, repair, and replacement of EEBAs required by paragraph (c) of this section, including EEBAs that are used; and retain these records for three years.

Section 227.209 Railroad's Program of Instruction on EEBAs

This proposed section identifies the elements of the instructional program that the railroad must establish and carry out for train employees and other employees who are part of the railroad's general EEBA program under § 227.211 and will be provided with EEBAs. The elements outlined in this section are partly adapted from OSHA's regulations. *See* 29 CFR 1910.134(k). The program proposed in this section should be considered the minimum, and the railroads are encouraged to provide additional relevant information depending on the types of EEBAs selected.

Proposed paragraph (b)(2) would require that any railroad transporting an asphyxiant or PIH material must provide sufficient training to its subject employees. Such employees must be able to demonstrate knowledge concerning why an EEBA is necessary; how improper fit, usage, or maintenance can compromise the protective effect of an EEBA; the limitations and capabilities of the type of EEBA that has been provided by the railroad, including the limited time for use; how to deal with emergency situations involving the use of EEBAs or if an EEBA malfunctions; how to inspect, put on, remove, and use an EEBA, including the inspection of seals; procedures for maintenance and storage of EEBAs; the selection criteria for EEBAs under § 227.203, employee responsibilities under subpart C; employee rights concerning access to records; and identification of hazardous materials that are classified as asphyxiants and PIH materials. FRA is particularly concerned that the employees know the limitations of the EEBAs provided so that the employees can avoid circumstances that would lead to reliance on the EEBAs for conditions or time frames beyond EEBA capabilities.

This program may be integrated with the railroad's program of instruction on the railroad's operating rules required by 49 CFR 217.11 or its program of instruction for hazmat employees under 49 CFR 172.704. Under 49 CFR 172.704(a)(3)(ii), for example, hazmat employees (which includes crews of freight trains transporting hazardous material), must receive "safety training" on means "to protect the employee from the hazards associated with hazardous materials to which they may be exposed in the work place, including special measures the hazmat employer has implemented to protect employees from exposure."

Proposed paragraph (c) establishes the timing of the initial and refresher training. Initial instruction must occur no later than 30 days prior to the date of compliance for the subject railroad. New employees must receive initial instruction prior to being assigned to jobs where EEBAs are required to be provided on a locomotive. The initial instruction must be supplemented with periodic instruction at least once every three years.

Proposed § 227.209(d) requires railroads to create and maintain an accurate record of employees instructed in compliance with § 227.209; and retain these records for three years.

Section 227.211 Requirement To Implement a General EEBA Program; Criteria for Placing Employees in the General EEBA Program

In this proposed section FRA requires railroads subject to subpart C to adopt and comply with a general EEBA program to ensure that the selection and distribution of the EEBAs is done in a technically appropriate, sustainable manner and supported by a comprehensive set of policies and procedures. These issues have already been discussed in detail at *III. Selection of the Appropriate EEBA* and *IV. Provision of EEBAs to Covered Employees,* above. Many of the procedures will likely be used as a basis for aspects of the required instructional program.

Proposed § 227.211(b)(4) requires the following to be placed in the railroad's general EEBA program: (1) Employees of railroads subject to this subpart who perform service subject to the provisions of the hours of service law governing "train employees," *see* 49 U.S.C. 21103, in the locomotive cabs of freight trains that carry an asphyxiant or a PIH material; (2) the direct supervisors of these train employees; and (3) any employees who deadhead in the locomotive cabs of such trains. The term "train employee" refers to employees who are engaged in functions traditionally associated with train, engine, and yard service; for example, engineers, conductors, brakemen, switchmen, and firemen. *See* 49 U.S.C. 21101(5); 49 CFR part 228, appendix A; and 74 FR 30665, June 26, 2009. In general, these employees may reasonably be expected to encounter the kinds of exposures anticipated by this proposed rule while in the locomotive cab. Therefore, FRA intends to have their needs for protection addressed by explicitly identifying them here.

A railroad may also identify other employees and designate them in writing to be included in its general EEBA program. In making this assessment, the railroad should consider an employee's work over the period of a year. In doing so, the railroads must think about how they use their workforces, *i.e.,* review the work that their employees perform, determine which employees will occupy the cab of the locomotive of an in-service freight train and therefore experience the risk of the release of an inhalation-material from the consist, and then place those employees in the general EEBA program.

Given the nature of the railroad industry, FRA is aware that some of these employees may not always work in the cab. Due to longstanding labor practices in the railroad industry concerning seniority privileges and concerning the ability of railroad employees to bid for different work assignments, these railroad employees are likely to change jobs frequently and to work for extended periods of time on assignments that involve duties outside the cab. For example, an employee might start the year in a job that involves mostly outside-the-cab work, spend three months working primarily inside the cab, and then return to outside-the-cab work for the rest of the year. In this type of situation, these proposed regulations would govern the exposure of this employee throughout the year despite the fact that the employee only spent three months inside the cab. This employee would be covered by this part, because he spent time, no matter how little, in a locomotive cab where the use of an EEBA may be required. As a result, the railroad must ensure that the employee is properly instructed in how to inspect and use an EEBA and provide an EEBA for those time periods in which the employee is serving as a train employee, as a direct supervisor of a train employee, or in a capacity that the railroad has determined, in its

discretion and designated in writing, should be provided an EEBA while any of these individuals is working in the cab of the locomotive of an in-service freight train transporting an asphyxiant or a PIH material.

Note that placement of an employee in the railroad's general EEBA program means different things depending on the nature of the program that the railroad chooses to adopt. For example, if the railroad's program states that the railroad will equip its fleet of locomotives with sets of EEBAs sufficient to accommodate the train crew and possible deadheading train employees, the railroad would provide the EEBA to the employee in that way, in the locomotive cab. On the other hand, if the railroad's program states that the railroad will provide the EEBA to the employee as part of his or her personal equipment, the railroad would have to provide the EEBA in that manner. If the employee for whatever reason did not have the EEBA with him or her while in the locomotive cab, the railroad would be prohibited from using the locomotive by proposed § 227.201(a)(2), which bars using a locomotive to transport a covered train if a covered employee occupying the cab of the locomotive does not access to a working EEBA. One constant would be that all railroads subject to this part would be required to instruct employees placed in their general EEBA program in how to use EEBAs; the provision on instruction at proposed § 227.209 requires that all employees identified in proposed § 227.211 be provided instruction on EEBAs.

Finally, proposed § 227.211(c) requires railroads to maintain records concerning the persons and positions designated to be placed in its EEBA program and retain these records for the duration of the designation and for one year after the designation has ended.

Section 227.213 Employee's Responsibilities

Since employees who must be provided the EEBAs are not always directly supervised by managers who can ensure the identified tasks are done at the appropriate time and frequency, this proposed section establishes certain responsibilities on the part of employees. Some of these tasks may involve making records of such tasks as pre-trip inspections that must be done to ensure the EEBAs are ready for use. Additionally, FRA proposes prohibiting employees from willfully tampering with or vandalizing an EEBA in an attempt to disable or damage the device. *See* 49 CFR part 209, appendix A for definition and discussion of "willfully."

The AAR's second January 13, 2010, letter requests that FRA treat an EEBA as a "safety device" within the meaning of 49 CFR part 218, Railroad Operating Practices, subpart D, Prohibition Against Tampering With Safety Devices, in order to discourage tampering or vandalism by railroad employees. FRA has decided that categorizing EEBAs as "safety devices" for purposes of the part 218, subpart D, would not be appropriate. The purpose of that subpart "is to prevent accidents and casualties that can result from the operation of trains when safety devices intended to improve the safety of their movement have been disabled." Part 218 defines "safety device" as—

> locomotive-mounted equipment that is used either to assure that the locomotive operator is alert, not physically incapacitated, aware of and complying with the indications of a signal system or other operational control system or to record data concerning the operation of that locomotive or the train it is powering.

FRA does not view the specific definition of "safety device" in part 218 as being so broad that it encompasses an EEBA provided under this proposed rule. While an EEBA may be locomotive-mounted equipment and is used to ensure the alertness and physical capacity of the engineer, it does not "assure" that the engineer is "complying with the indications of a signal system or other operational control system" because an EEBA will not take over the operation of the locomotive or the train and, indeed, is primarily intended to facilitate a train employee's ability to escape from the locomotive, not to enable the engineer to operate the locomotive. Nor is an EEBA used to record data on the operation of the locomotive or the train. FRA's published interpretation reads the term "safety device" narrowly as including such items as event recorders, deadman pedals, alerters, automatic cab signals, cab signal whistles, automatic train stop equipment, and automatic train control equipment. *See* 49 CFR part 218, appendix C. Not classifying an EEBA as a safety device is consistent with that interpretation. Instead, FRA proposes to include a prohibition on willfully tampering with or vandalizing EEBAs as paragraph (b) of proposed § 227.213.

Section 227.215 Recordkeeping in General

Proposed § 227.215 sets out some general recordkeeping provisions. The Secretary is granted authority to inspect relevant records by 49 U.S.C. 20107. Pursuant to that authority, delegated from the Secretary under 49 CFR 1.49 and from the Administrator through internal delegations, FRA inspectors must act within certain parameters when inspecting records. FRA inspectors who enter upon railroad property and inspect records must do so at a reasonable time and in a reasonable manner, must provide proper credentials upon request, and must limit their request to records that are relevant to FRA's investigation.

Section 227.215(a) addresses the availability of required records. Section 227.215(a) provides that records required under this part, except for records of pre-trip inspections, be kept at system and division headquarters. It requires that a railroad make all records available for inspection and copying or photocopying by representatives of FRA upon request. The railroad must also make an employee's records available for inspection and copying or photocopying by that employee or such person's representative upon written authorization by such employee.

Section 227.215(b) permits required records to be kept in electronic form. These requirements are almost identical to the electronic recordkeeping requirements found in FRA's existing Track Safety Standards, 49 CFR 213.241(e). Section 227.215(b) allows each railroad to design its own electronic system as long as the system meets the specified criteria in § 227.215(b)(1) through (5), which are intended to safeguard the integrity and authenticity of each record.

Section 227.217 Compliance Dates

The specific dates by which certain groups of railroads will be required to comply will be set upon publication of the final rule. FRA recognizes that it will take time to procure EEBAs, instruct employees on their use, and outfit locomotives with the appropriate equipment to carry the devices. FRA envisions staggering the compliance dates based on the size of the railroad, with larger railroads having to comply earlier. The AAR's January 13, 2010, letter referenced earlier requests "that FRA allow at least two years from the effective date of the final rule for the railroad to be compliant with the regulation." Under the proposed rule, FRA requires Class I railroads to be compliant within 24 months of publication of the final rule, with required compliance following for Class II railroads at 30 months and Class III and other railroads at 36 months. FRA seeks comment on whether a staggered compliance schedule with an initial two-year delay between the effective date and the compliance date for Class

I railroads is reasonable under the circumstances.

Appendix G—Schedule Of Civil Penalties

Finally, FRA proposes to correct a heading within the civil penalty schedule by replacing "Subpart B—General Requirements" with "Subpart B—Occupational Noise Exposure for Railroad Operating Employees".

IX. Regulatory Impact

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking proposes regulations that would require railroads to provide effective EEBAs for crewmembers in locomotive cabs on freight trains transporting asphyxiants or PIH materials and provide training in their use. The proposed rule has been evaluated in accordance with existing policies and procedures. It 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. This rule is not significant under the DOT Regulatory Policies and Procedures. 44 FR 11034. A Regulatory Evaluation addressing the economic impact of this proposed rule has been prepared and placed in the docket.

FRA estimates that the present value of the total ten-year costs, which is expected to incur to comply with this proposed rule is either $73.9 million for the open loop/circuit EEBAs or $81.9 million for the closed loop/circuit EEBAs.

The benefits associated with preventing the casualties identified by FRA as potentially preventable through the use of EEBAs would total close to $13.5 million. The EEBAs would have to be used properly and quickly for them to be fully effective. Based on historical experience, the discounted costs of implementing the proposed rule would likely exceed the expected benefits, even assuming 100 percent effectiveness of the EEBAs, not discounting the value of the benefits, or including indirect benefits. The number of fatalities or injury equivalents that would have to be prevented for the benefits to cover the costs would be many times greater than the railroad employee fatalities that actually occurred.

Although the costs associated with implementation of the proposed rule would likely exceed the benefits, FRA is constrained by the requirements of RSIA, which specifically mandates that the Secretary require railroads to: (1) Ensure that EEBAs affording suitable "head and neck coverage with respiratory protection" are provided "for all crewmembers" in a locomotive cab on a freight train "carrying hazardous materials that would pose an inhalation hazard in the event of release"; (2) provide a place for convenient storage of EEBAs in the locomotive that will allow "crewmembers to access such apparatus quickly"; (3) maintain EEBAs "in proper working condition"; and (4) provide crewmembers with appropriate instruction in the use of EEBAs. Nevertheless, FRA has taken several steps to provide railroads with flexibility in this proposed rule. For instance, FRA is not proposing a particular method of deployment of EEBAs, but rather leaving that to the railroad discretion. In addition, railroads will be able to elect the type of apparatus to use in their program (closed-loop or open-loop). This allows railroads to deploy EEBAs in the manner best suited to their operation.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) and Executive Order 13272 (67 FR 53461, August 16, 2002) require agency review of proposed and final rules to assess their impact on small entities. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), FRA has prepared and placed in the docket a Certification Statement that assesses the small entity impact of this proposed rule, and certifies that this proposed rule is not expected to have a significant economic impact on a substantial number of small entities.

Document inspection and copying facilities are available at the DOT Central Docket Management Facility located in Room W12–140 on the Ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590. Docket material is also available for inspection electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at the Office of the Chief Counsel, RCC–10, Mail Stop 10, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590; please refer to Docket No. FRA–2009–0044.

The U.S. Small Business Administration (SBA) stipulates in its "Size Standards" that the largest a railroad business firm that is "for-profit" may be, and still be classified as a "small entity," is 1,500 employees for "Line-Haul Operating Railroads," and 500 employees for "Switching and Terminal Establishments." "Small entity" is defined in the Act as a small business that is independently owned and operated, and is not dominant in its field of operation. SBA's "Size Standards" may be altered by Federal agencies after consultation with SBA and in conjunction with public comment. Pursuant to that authority, 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. The revenue requirements are currently $20 million or less in annual operating revenue, based on 1991 dollars. The $20-million limit (which is adjusted by applying the railroad revenue deflator adjustment) is based on the Surface Transportation Board's threshold for a Class III railroad carrier. FRA uses the same revenue dollar limit to determine whether a railroad or shipper or contractor is a small entity. 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.

There are 567 freight railroads. Information available to FRA indicates that approximately 110 railroads that meet the definition of "small entity" would be impacted. However, FRA does not anticipate that the proposed rule would impose a significant impact on these small entities because they would be able to manage their EEBA programs in such a way as to minimize costs. Given their smaller size and limited territory in which they operate, they can develop a management system that allows them to optimally allocate EEBAs without necessarily having to purchase one for each locomotive or train and engine crewmember. In addition, many of these small railroads are subsidiaries of large short line holding companies with the expertise and resources comparable to larger railroads. The number of EEBAs a small railroad would have to install would vary in proportion to the number of locomotives used for transporting PIH materials or asphyxiants.

FRA invites comments from all interested parties on this Certification. FRA particularly encourages small entities that could potentially be impacted by the proposed amendments to participate in the public comment process by submitting comments on this assessment or this rulemaking to the official DOT docket. A draft of the proposed rule has not been submitted to the SBA for formal review. However, FRA will consider any comments submitted by the SBA in developing the final rule.

C. Federalism

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 NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. FRA has determined that, if adopted, the proposed rule would not have substantial direct effects on the States, on the relationship between the national government and the States, nor on the distribution of power and responsibilities among the various levels of government. In addition, FRA has determined that this proposed rule will not impose substantial direct compliance costs on State and local governments. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

However, this proposed rule could have preemptive effect by operation of law under certain provisions of the Federal railroad safety statutes, specifically the former FRSA, repealed and recodified at 49 U.S.C 20106, and the former LBIA, repealed and recodified at 49 U.S.C. 20701–20703. *See* Public Law 103–272 (July 5, 1994). The former 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 "local safety or security hazard" exception to section 20106. Moreover, the former LBIA has been interpreted by the Supreme Court as preempting the entire field of locomotive safety. *See Napier* v. *Atlantic Coast R.R.,* 272 U.S. 605, 611; 47 S.Ct. 207, 209 (1926).

In sum, FRA has analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 13132. As explained above, FRA has determined that this proposed rule has no federalism implications, other than the possible preemption of State laws under the former FRSA and the former LBIA. Accordingly, FRA has determined that preparation of a federalism summary impact statement for this proposed rule is not required.

D. International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. This rulemaking is purely domestic in nature and is not expected to affect trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

E. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the new information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
227.13—Waivers	200 Railroads	13 waiver requests	16 hours	208
227.201—Designations	200 Railroads	700 designations	3 minutes	35
227.203—EEBA Selection Criteria—EEBA Adequacy Justification documents.	200 Railroads	67 written justifications	2 hours	134
227.205—Copies of EEBA Instructions	200 Railroads	26,250 instr. copies	3 minutes	1,313
227.207—Pre-trip and Periodic EEBA Inspections/Records.	200 Railroads	73,000 insp./records	1 minute	1,217
—Records of EEBA Returns, Maintenance, Repairs/Replacements.	200 Railroads	233 records	5 minutes	19
227.209—Employee Instruction on EEBA—Initial Training.	200 Railroads	70,000 tr. employees	2 hours	140,000
—Periodic/Refresher Training	200 Railroads	23,333 tr. employees	15 minutes	5,833
—Records of Initial Training	200 Railroads	70,000 records	5 minutes	5,833
—Records of Periodic Training	200 Railroads	23,333 records	2 minutes	778
227.211—General EEBA Implementation Program.	200 Railroads	67 programs	80 hours	5,360
227.213—Notification to Railroad of EEBA Failure/Use Incidents.	200 Railroads	100 notifications	1 minute	2
227.215—Electronic Recordkeeping—Railroad Modification of Electronic Recordkeeping System to Meet FRA Requirements.	18 Railroads	18 modified Systems	120 hours	2,160

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning: Whether these information collection requirements are necessary for the proper performance of the functions of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB, contact Mr. Robert Brogan, Information Clearance Officer, at 202–493–6292, or Ms. Kimberly Toone at 202–493–6132.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Mr. Robert Brogan or Ms. Kimberly Toone, Federal Railroad Administration, 1200 New Jersey Avenue, SE., 3rd Floor, Washington, DC 20590. Comments may also be submitted via e-mail to Mr. Brogan or Ms. Toone at the following address: *Robert.Brogan@dot.gov; Kimberly.Toone@dot.gov*.

OMB is required to make a decision concerning the collection of information requirements contained in this proposed 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. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

FRA is not authorized to impose a penalty on persons for violating information collection requirements which 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 the final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

F. Compliance With the Unfunded Mandates Reform Act of 1995

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 annually for inflation) [currently $140,800,000] 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. The proposed rule would not result in the expenditure, in the aggregate, of $140,800,000 or more in any one year, and thus preparation of such a statement is not required.

G. Environmental Assessment

FRA has evaluated this proposed rule in accordance with its "Procedures for Considering Environmental Impacts" (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this proposed rule is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. (*See* 64 FR 28547, May 26, 1999). Section 4(c)(20) reads as follows:

> (c) Actions categorically excluded. Certain classes of FRA actions have been determined to be categorically excluded from the requirements of these Procedures as they do not individually or cumulatively have a significant effect on the human environment.
>
> * * * * *
>
> The following classes of FRA actions are categorically excluded:
>
> * * * * *
>
> (20) Promulgation of railroad safety rules and policy statements that do not result in significantly increased emissions or air or water pollutants or noise or increased traffic congestion in any mode of transportation.

In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this proposed rule is not a major Federal action significantly affecting the quality of the human environment.

H. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any "significant energy action." (66 FR 28355, May 22, 2001). Under the Executive Order, a "significant energy action" is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this NPRM in accordance with Executive Order 13211. FRA has determined that this NPRM is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this NPRM is not a "significant energy action" within the meaning of Executive Order 13211.

I. Privacy Act

FRA wishes to inform all potential commenters that 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) or you may visit *http://www.regulations.gov/search/footer/privacyanduse.jsp.*

List of Subjects in 49 CFR Part 227

Hazardous materials transportation, Incorporation by reference, Locomotive noise control, Occupational safety and health, Penalties, Railroad employees, Railroad safety, Reporting and recordkeeping requirements.

The Proposal

In consideration of the foregoing, FRA proposes to amend part 227 of chapter II, subtitle B of title 49 of the Code of

Federal Regulations is amended as follows:

PART 227—OCCUPATIONAL SAFETY AND HEALTH IN THE LOCOMOTIVE CAB

1. The authority citation for part 227 is amended to read as follows:

Authority: 49 U.S.C. 103, 20103, 20103, note, 20166, 20701–20703, 21301, 21302, 21304; 28 U.S.C. 2461, note; 49 CFR 1.49.

2. The heading for part 227 is amended to read as set forth above.

3. Section 227.1 is revised to read as follows:

§ 227.1 Purpose and scope.

(a) *General.* The purpose of this part is to protect the occupational safety and health of certain employees who are exposed to occupational dangers while in the cab of the locomotive. This part prescribes minimum Federal safety and health standards for certain locomotive cab occupants. This part does not restrict a railroad or railroad contractor from adopting and enforcing additional or more stringent requirements.

(b) *Subpart B.* The purpose of subpart B is to protect the occupational safety and health of employees whose predominant noise exposure occurs in the locomotive cab. This subpart prescribes minimum Federal safety and health noise standards for locomotive cab occupants.

(c) *Subpart C.* The purpose of subpart C is to protect the occupational safety and health of train employees and certain other employees in the cab of the locomotive of a freight train that is transporting an asphxiant or a PIH material that, if released due to a railroad accident/incident, would pose an inhalation hazard to the occupants. In particular, subpart C is intended to protect these employees from the risk of exposure to the material while they are located in, or during escape from, the locomotive cab.

4. Section 227.3 is amended as follows:

a. In paragraph (a) remove the phrase "this part" and add "subpart B" in its place.

b. In the introductory text of paragraph (b) remove the phrase "This part" and add "Subpart B" in its place.

c. In paragraph (b)(5)—

i. Remove the phrase "Associate Administrator for Safety" and add "Associate Administrator for Railroad Safety/Chief Safety Officer"; and

ii. Remove the phrase "this part" and add "subpart B" in its place.

d. Add paragraphs (c) and (d) to read as follows:

§ 227.3 Applicability.

* * * * *

(c) Except as provided in paragraph (d) of this section, subpart C applies to any railroad that operates a freight train that transports an asphyxiant or a PIH material, including a residue of such an asphyxiant or PIH material, on standard gage track that is part of the general railroad system of transportation.

(d) Subpart C does not apply to a railroad that operates only on track inside an installation that is not part of the general railroad system of transportation.

5. Section 227.5 is amended by adding the following definitions to read as follows:

§ 227.5 Definitions.

* * * * *

Accident/incident has the meaning that is assigned to that term by § 225.5 of this chapter.

* * * * *

Asphyxiant or PIH material means—

(1) Any of the hazardous materials defined in § 173.115 of this title as—

(i) Class 2, Division 2.1 (Flammable gas);

(ii) Class 2, Division 2.2 (non-flammable, non-poisonous compressed gas—including compressed gas, liquefied gas, pressurized cryogenic gas, compressed gas in solution, asphyxiant gas and oxidizing gas); or

(iii) Class 2, Division 2.3 (Gas poisonous by inhalation);

(2) Any of the hazardous materials that is a gas, liquid, or other material defined as a "material poisonous by inhalation" by § 171.8 of this title.

The term "asphyxiant or PIH material" includes only the foregoing material that is in "commerce" as defined by § 171.8 of this title. The term does not, for example, include personal care items and toiletries possessed by an occupant of a locomotive, such as aerosols containing chemicals that would be classified in Division 2.2 if they were in commerce (*e.g.,* shaving cream and hair spray).

Associate Administrator for Railroad Safety/Chief Safety Officer means the Associate Administrator for Railroad Safety/Chief Safety Officer, Federal Railroad Administration, 200 New Jersey Avenue, SE., Washington, DC 20590.

Atmosphere immediately dangerous to life or health (IDLH) means an atmosphere that poses an immediate threat to life, would cause irreversible adverse health effects, or would impair an individual's ability to escape from a dangerous atmosphere.

Atmosphere-supplying device means a respirator that supplies the respirator user with breathing air from a source that is independent of the ambient atmosphere. Such devices include supplied-air respirators and self-contained breathing apparatus units.

* * * * *

Deadheading means the physical relocation of a train employee from one point to another as a result of a railroad-issued oral or written directive.

Division headquarters means the location designated by the railroad where a high-level operating manager (*e.g.,* a superintendent, division manager, or equivalent), who has jurisdiction over a portion of the railroad, has an office.

Emergency escape breathing apparatus or *EEBA* means an atmosphere-supplying respirator device that is designed for use only during escape from a hazardous atmosphere.

* * * * *

Freight car means a vehicle designed to transport freight, or railroad personnel, by rail and includes a—

(1) Box car;
(2) Refrigerator car;
(3) Ventilator car;
(4) Stock car;
(5) Gondola car;
(6) Hopper car;
(7) Flat car;
(8) Special car;
(9) Caboose;
(10) Tank car; and
(11) Yard car.

Freight train means one or more locomotives coupled with one or more freight cars, except during switching service.

Hazardous material has the meaning assigned to that term by § 171.8 of this title.

Hazmat employee has the meaning assigned to that term by § 171.8 of this title.

* * * * *

In service or in-service when used in connection with a freight train, means each freight train subject to this part unless the train—

(1) Is in a repair shop or on a repair track;

(2) Is on a storage track and its cars are empty; or

(3) Has been delivered in interchange but has not been accepted by the receiving carrier.

Intermodal container means a freight container designed and constructed to permit it to be used interchangeably in two or more modes of transportation.

ISO means the International Organization for Standardization, a network of national standards institutes in 162 countries, including the United States through the American National

Standards Institute, that develops international standards to assist in ensuring the safe performance of a wide range of devices, including EEBAs.

* * * * *

NIOSH means the National Institute for Occupational Safety and Health, a Federal agency responsible for conducting research and making recommendations for the prevention of work-related injury and illness, which is part of the Centers for Disease Control and Prevention in the U.S. Department of Health and Human Services and certifies industrial-type respirators in accordance with the NIOSH respiratory regulations (42 CFR part 84 (June 8, 1995)).

* * * * *

PIH material means poison inhalation hazard material. See definition of *asphyxiant or PIH material,* above.

* * * * *

Residue has the meaning assigned to the term by § 171.8 of this title.

* * * * *

Switching service means the classification of freight cars according to commodity or destination; assembling of cars for train movements; changing the position of cars for purposes of loading, unloading, or weighing; placing of locomotives and cars for repair or storage; or moving of rail equipment in connection with work service that does not constitute a train movement.

System headquarters means the location designated by the railroad as the general office for the railroad system.

* * * * *

Train employee means an individual who is engaged in or connected with the movement of a train, including a hostler, as defined in 49 U.S.C. 21101.

§ 227.7 [REMOVED AND RESERVED]

6. Remove and reserve § 227.7.

7. Section § 227.15 is amended by revising paragraph (b) to read as follows:

§ 227.15 Information collection.

* * * * *

(b) The information collection requirements are found in the following sections: §§ 227.13, 227.103, 227.107, 227.109, 227.111, 227.117, 227.119, 227.121, 227.201, 227.207, 227.209, 227.211, 227.213, and 227.215.

§ 227.103 [AMENDED]

8. Section 227.103 is amended as follows:

a. In paragraph (a)(1) remove the phrase "Class 1" and add "Class I" in its place.

b. In paragraph (a)(2) remove the phrase "Class 1" and add "Class I" in its place.

§ 227.109 [AMENDED]

9. Section 227.109, paragraph (e)(2)(i) is amended by removing the phrase "Class 1" and adding "Class I" in its place.

§ 227.119 [AMENDED]

10. Section 227.119, paragraph (b)(2) is amended by removing the phrase "Class 1" and adding "Class I" in its place.

11. Add new subpart C to part 227 to read as follows:

Subpart C—Emergency Escape Breathing Apparatus Standards

Sec.

227.201 Criteria for requiring availability of EEBAs in the locomotive cab.
227.203 Criteria for selecting EEBAs.
227.205 Storage facilities for EEBAs.
227.207 Railroad's program for inspection, maintenance, and replacement of EEBAs; requirements for procedures.
227.209 Railroad's program of instruction on EEBAs.
227.211 Requirement to implement a general EEBA program; criteria for placing employees in the general EEBA program.
227.213 Employee's responsibilities.
227.215 Recordkeeping in general.
227.217 Compliance dates.

Subpart C—Emergency Escape Breathing Apparatus Standards

§ 227.201 Criteria for requiring availability of EEBAs in the locomotive cab.

(a) *In general.* (1)(i) Except as specified in paragraph (b) of this section, a railroad is required to provide an EEBA to each of the following of its employees while the employee is located in the cab of a locomotive of an in-service freight train transporting an asphyxiant or a PIH material, including a residue of an asphyxiant or a PIH material:

(A) Any train employee;

(B) Any direct supervisor of the train employee;

(C) Any employee who is deadheading; and

(D) Any other employee designated by the railroad in writing and at the discretion of the railroad.

(ii) Each EEBA provided to an employee identified in paragraph (a)(1)(i) of this section must meet the EEBA-selection criteria of § 227.203 and must have been inspected and be in working order pursuant to the requirements of § 227.207 at the time that the EEBA is provided to the employee.

(2) Except as specified in paragraph (b) of this section, a railroad shall not use a locomotive to transport an asphyxiant or a PIH material, including a residue of an asphyxiant or a PIH material, in an in-service freight train unless each of the employees identified in paragraph (a)(1)(i) of this section while in the cab of the locomotive of the train has access to an EEBA that satisfies the EEBA-selection criteria in § 227.203 and that has been inspected and is in working order pursuant to the requirements in § 227.207.

(b) *Exceptions.* (1) A railroad is not required to provide an EEBA, or make accessible an EEBA, to an employee while in the locomotive cab of an in-service freight train transporting an asphyxiant or a PIH material if all of the asphyxiants or PIH materials in the train, including a residue of an asphyxiant or a PIH material, are being hauled in one or more intermodal containers.

(2) This subpart does not apply to any of the following:

(i) Employees who are moving a locomotive or group of locomotives coupled to a car or group of cars transporting an asphyxiant or PIH material, including a residue of an asphyxiant or a PIH material, only within the confines of a locomotive repair or servicing area.

(ii) Employees who are moving a locomotive or group of locomotives coupled to a car or group of cars transporting an asphyxiant or PIH material, including a residue of an asphyxiant or a PIH material for distances of less than 100 feet for inspection or maintenance purposes.

(c) Notwithstanding any exceptions identified in this subpart, any employee who willfully tampers with or vandalizes an EEBA shall be subject to this subpart for purposes of enforcement relating to § 227.213 (Employee responsibilities).

§ 227.203 Criteria for selecting EEBAs.

In selecting the appropriate EEBA to provide to an employee, the railroad shall do the following:

(a) Select an atmosphere-supplying EEBA that protects against all asphyxiants or PIH materials (including their residue) that are being transported by the freight train while in service.

(b) Ensure that the type of respirator selected has been certified for an escape only purpose by the National Institute for Occupational Safety and Health pursuant to 49 CFR part 84 or by the International Organization for Standardization pursuant to ISO 23269–1:2008(E).

(c) Document the adequacy of protection for all potential hazardous atmospheres reasonably expected to be encountered and provide such documentation for inspection by FRA upon request.

(d) Document, and provide such documentation for inspection by FRA upon request, the rationale for the final selection of an EEBA by addressing each of the following concerns:

(1) *Breathing time.* Each EEBA must be fully charged and contain a minimum breathing capacity of 15 minutes at the time of the pre-trip inspection required under § 227.207(a)(1).

(2) *Face and neck protection.* The EEBA selected must provide a means of protecting the individual's face and neck to facilitate escape.

(3) *Accommodation for eyeglasses and a range of facial features.* The EEBA selected must provide a means of protecting each employee who is required to be provided with the EEBA, including those who wear glasses, and allow for the reasonable accommodation of each such employee's facial features, including facial hair.

§ 227.205 Storage facilities for EEBAs.

(a) A railroad may not use a locomotive if it is part of an in-service freight train transporting an asphyxiant or a PIH material, including a residue of an asphyxiant or a PIH material, and the locomotive cab is occupied by an employee identified in § 227.201(a)(1)(i)(A)–(D) (subject employee), unless the locomotive cab has appropriate storage facilities to hold the number of EEBAs required to be provided.

(b) The storage facility for each required EEBA must—

(1) Prevent deformation of the face piece and exhalation valve, where applicable;

(2) Protect the EEBA from incidental damage, contamination, dust, sunlight, extreme temperatures, excessive moisture, and damaging chemicals;

(3) Provide each subject employee located in the locomotive cab with ready access to the EEBA during an emergency; and

(4) Provide a means for each subject employee to locate the EEBA under adverse conditions such as darkness or disorientation.

(c) A railroad must comply with the applicable manufacturer's instructions for storage of each required EEBA and must keep a copy of the instructions at its system headquarters for FRA inspection.

§ 227.207 Railroad's program for inspection, maintenance, and replacement of EEBAs; requirements for procedures.

(a) *General.* Each railroad shall establish and comply with a written program for inspection, maintenance, and replacement of EEBAs that are required under this subpart. The program for inspection, maintenance, and replacement of EEBAs shall be maintained at the railroad's system headquarters and shall be amended, as necessary, to reflect any significant changes. This program shall include the following procedures:

(1) Procedures for performing and recording a pre-trip inspection of each EEBA that is required to be provided on a locomotive being used to transport an asphyxiant or a PIH material and procedures for cleaning, replacing, or repairing each required EEBA, if necessary, prior to its being provided under § 227.201(a);

(2) Procedures for performing and recording periodic inspections and maintenance of each required EEBA in a manner and on a schedule in accordance with the manufacturer's recommendations; and

(3) Procedures for turning in and obtaining a replacement for a defective, failed, or used EEBA and for recording those transactions.

(b) *Inspection procedures and records.* (1) A railroad's procedures for pre-trip and periodic inspections of EEBAs shall require that the following information about each pre-trip and periodic inspection be accurately recorded on a tag or label that is attached to the storage facility for the EEBA or kept with the EEBA or in inspection reports stored as paper or electronic files:

(i) The name of the railroad performing the inspection;

(ii) The date that the inspection was performed;

(iii) The name and signature of the individual who made the inspection;

(iv) The findings of the inspection;

(v) The required remedial action; and

(vi) A serial number or other means of identifying the inspected EEBA.

(2) A railroad shall maintain an accurate record of each pre-trip and periodic inspection required by this section and retain each of these records for one year.

(c) *Procedures applicable if EEBA fails an inspection or is used.* An EEBA that fails an inspection required by this section, is otherwise found to be defective, or is used, shall be removed from service and be discarded, repaired, adjusted, or cleaned in accordance with the following procedures:

(1) Repair, adjustment, and cleaning of EEBAs shall be done only by persons who are appropriately trained to perform such work and who shall use only the EEBA manufacturer's approved parts designed to maintain the EEBA in NIOSH-certified (49 CFR part 84) or ISO-certified (ISO 23269–1:2008(E)) condition.

(2) Repairs shall be made according to the manufacturer's recommendations and specifications for the type and extent of repairs to be performed.

(3) Where applicable, reducing and admission valves, regulators, and alarms shall be adjusted or repaired only by the manufacturer or a technician trained by the manufacturer.

(d) *Records of returns, maintenance, repair, and replacement.* A railroad shall—

(1) Maintain an accurate record of return, maintenance, repair, or replacement for each EEBA required by this subpart; and

(2) Retain each of these records for three years.

§ 227.209 Railroad's program of instruction on EEBAs.

(a) *General.* (1) A railroad shall adopt and comply with its written program of instruction on EEBAs for all of its employees in its general EEBA program under § 227.211 (subject employees). The program of instruction shall be maintained at the railroad's system headquarters and shall be amended, as necessary, to reflect any significant changes.

(2) This program may be integrated with the railroad's program of instruction on operating rules under § 217.11 of this chapter or its program of instruction for hazmat employees under § 172.704 of this title. If the program is not integrated with either of these programs, it must be written in a separate document that is available for inspection by FRA.

(b) *Subject matter.* The railroad's program of instruction shall require that the subject employees demonstrate knowledge of at least the following:

(1) Why the EEBA is necessary and how improper fit, usage, or maintenance can compromise the protective effect of the EEBA.

(2) The capabilities and limitations of the EEBA, particularly the limited time for use.

(3) How to use the EEBA effectively in emergency situations, including situations in which the EEBA malfunctions.

(4) How to inspect, put on, remove, and use the EEBA, and how to check the seals of the EEBA.

(5) Procedures for maintenance and storage of the EEBA that must be followed.

(6) The EEBA-selection criteria in § 227.203.

(7) The requirements of this subpart related to the responsibilities of employees and the rights of employees to have access to records.

(8) The hazardous materials classified as asphyxiants and PIH materials.

(c) *Dates of initial instruction and intervals for periodic instruction.* (1) The instruction shall be provided for current subject employees on an initial basis no later than 30 days prior to the date of compliance identified in § 227.217 or for new subject employees, before assignment to jobs where the deployment of EEBAs on a locomotive is required.

(2) Initial instruction shall be supplemented with periodic instruction at least once every three years.

(d) *Records of instruction.* A railroad shall maintain a record of employees provided instruction in compliance with this section and retain these records for three years.

§ 227.211 Requirement to implement a general EEBA program; criteria for placing employees in the general EEBA program.

(a) *In general.* A railroad shall adopt and comply with a comprehensive, written, general program to implement this subpart that shall be maintained at the railroad's system headquarters. Each railroad shall amend its general EEBA program, as necessary, to reflect any significant changes.

(b) *Elements of the general EEBA program and criteria for placing employees in program.* A railroad's general EEBA program shall—

(1) Identify the individual that implements and manages the railroad's general EEBA program by name, title, and contact information. The individual must have suitable training and sufficient knowledge, experience, skill, and authority to enable him or her to manage properly a program for provision of EEBAs. If the individual is not directly employed by the railroad, the written program must identify the business relationship of the railroad to the individual fulfilling this role.

(2) Describe the administrative and technical process for selection of EEBAs appropriate to the hazards that may be reasonably expected.

(3) Describe the process used to procure and provide EEBAs in a manner to ensure the continuous and ready availability of an EEBA to each of the railroad's employees identified in § 227.201(a)(1)(i)(A)–(D) (while actually occupying the locomotive cab of a freight train in service transporting an asphyxiant or a PIH material). This description shall include—

(i) A description of the method used for provision of EEBAs, including whether the EEBAs are individually assigned to employees, installed on locomotives as required equipment, or provided by other means. If EEBAs are installed on locomotives as required equipment, the means of securement shall be designated.

(ii) The decision criteria used by the railroad to identify trains in which provision of EEBAs is not required.

(iii) A description of what procedures will govern the railroad at interchange to ensure that the locomotive cab in each in-service freight train transporting an asphyxiant or a PIH material has an EEBA accessible to each of the employees identified in § 227.201(a)(1)(i)(A)–(D) while in the cab of the locomotive, including what procedures are in place to ensure that the EEBAs provided satisfy the EEBA-selection criteria in § 227.203, satisfy the EEBA-storage criteria in § 227.205, and have been inspected and are in working order pursuant to the requirements in § 227.207.

(4) Ensure that each of the following employees, except those excluded by § 227.201(b), whose duties require regular work in the locomotive cabs of in-service freight trains transporting an asphyxiant or a PIH material, including a residue of an asphyxiant or a PIH material, has the required EEBA available when he or she does occupy the cab of such a train and knows how to use the EEBA:

(i) Employees who perform service subject to 49 U.S.C. 21103 (train employees) on such trains;

(ii) Direct supervisors of train employees on such trains;

(iii) Deadheading employees on such trains; and

(iv) Any other employees designated by the railroad in writing and at the discretion of the railroad.

(c) *Records of positions or individuals or both in the railroad's general EEBA program.* A railroad shall maintain a record of all positions or individuals, or both, who are designated by the railroad to be placed in its general EEBA program pursuant to § 227.211(b)(4). The railroad shall retain these records for the duration of the designation and for one year thereafter.

(d) *Consolidated programs.* A group of two or more commonly controlled railroads subject to this subpart may request in writing that the Associate Administrator for Railroad Safety/Chief Safety Officer (Associate Administrator) treat them as a single railroad for purposes of adopting and complying with the general EEBA program required by this section. The request must list the parent corporation that controls the group of railroads and demonstrate that the railroads operate in the United States as a single, integrated rail system. The Associate Administrator will notify the railroads of his or her decision in writing.

§ 227.213 Employee's responsibilities.

(a) An employee to whom the railroad provides an EEBA shall—

(1) Participate in training under § 227.209;

(2) Follow railroad procedures to ensure that the railroad's EEBAs—

(i) Are maintained in a secure and accessible manner;

(ii) Are inspected as required by this subpart and the railroad's program of inspection; and

(iii) If found to be unserviceable upon inspection, are turned in to the appropriate railroad facility for repair, periodic maintenance, or replacement; and

(3) Notify the railroad of EEBA failures and of use incidents in a timely manner.

(b) No employee shall willfully tamper with or vandalize an EEBA that is provided pursuant to § 227.201(a) in an attempt to disable or damage the EEBA.

§ 227.215 Recordkeeping in general.

(a) *Availability of records.* (1) A railroad shall make all records required by this subpart available for inspection and copying or photocopying to representatives of FRA, upon request.

(2) Except for records of pre-trip inspections of EEBAs under § 227.207, records required to be retained under this subpart must be kept at the system headquarters and at each division headquarters where the tests and inspections are conducted.

(b) *Electronic records.* All records required by this subpart may be kept in electronic form by the railroad. A railroad may maintain and transfer records through electronic transmission, storage, and retrieval provided that all of the following conditions are met:

(1) The electronic system is designed so that the integrity of each record is maintained through appropriate levels of security such as recognition of an electronic signature, or other means, which uniquely identify the initiating person as the author of that record. No two persons have the same electronic identity.

(2) The electronic system ensures that each record cannot be modified in any way, or replaced, once the record is transmitted and stored.

(3) Any amendment to a record is electronically stored apart from the record that it amends. Each amendment to a record is uniquely identified as to the individual making the amendment.

(4) The electronic system provides for the maintenance of records as originally

submitted without corruption or loss of data.

(5) Paper copies of electronic records and amendments to those records that may be necessary to document compliance with this subpart are made available for inspection and copying or photocopying by representatives of FRA.

§ 227.217 Compliance dates.

(a) Class I railroads subject to this subpart are required to comply with this subpart beginning no later than 24 months from the effective date of the final rule.

(b) Class II railroads subject to this subpart are required to comply with this subpart beginning no later than 30 months from the effective date of the final rule.

(c) Class III railroads subject to this subpart and any other railroads subject to this subpart are required to comply with this subpart beginning no later than 36 months from the effective date of the final rule.

Appendix G to Part 227—Schedule of Civil Penalties [AMENDED]

10. In appendix G, remove "Subpart B—General Requirements" and add in its place "Subpart B—Occupational Noise Exposure for Railroad Operating Employees".

Issued in Washington, DC, on September 28, 2010.

Karen J. Rae,

Deputy Administrator, Federal Railroad Administration.

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

BILLING CODE 4910–06–P

Appendix A: AAR's first letter to FRA on emergency escape breathing devices, dated January 13, 2010

ASSOCIATION OF AMERICAN RAILROADS

James P. Grady
Assistant Vice President, Technical Services
Safety and Operations

January 13, 2010

Mr. Grady C. Cothen
Deputy Associate Administrator
Federal Railroad Administration
Safety Standards & Program Development
1200 New Jersey Avenue, SE
Third Floor West
Washington, DC 20590

Dear Mr. Cothen:

The Association of American Railroads, on behalf of its member roads, is offering the recommendations shown below regarding Emergency Escape Breathing Devices (EEBD) that will be required by the Rail Safety Improvement Act of 2008 (RSIA).

As was discussed in previous meetings, the railroads' Industrial Hygienists have finalized a specification for a device that meets the objective of the RSIA which is to provide for escape from the area where a release of hazardous materials has occurred that may pose an inhalation hazard. One of the important features of this specification is the provision for the device to have a 15 minute functional rating. Investigations and studies by the railroads' Industrial Hygienists have found that the area of destruction following a release is such that 15 minutes is a more than adequate time period to escape the area. Requiring a device with a greater capacity would result in one that is larger and heavier than called for in this specification. Real estate in the locomotive cab is already at a premium. It is problematic for the railroads to install brackets or holders for the EEBD called for in this specification. Requiring a larger device in the regulation would complicate this issue by taking more space. Similarly, requiring a device with a greater functional rating would necessitate crew members to manage a device easily twice the size and weight of the six (6) pound unit preferred by the Industrial Hygienists.

425 Third Street, SW, Suite 1000 | Washington, DC 20024 | | P (202) 639-2141 | F (202) 639-2930

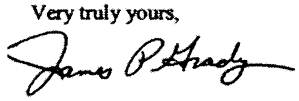
Specification, M-1005, is presently being worked through the approval process for AAR Standards. It is this specification that we recommend FRA include by reference in the forthcoming regulation.

Another issue that AAR wishes to be considered relates to the scope of assignments for which EEBD will be required. AAR recommends that applications be limited solely to road freight trains, as we feel is the intent of the RSIA. Remote Control Locomotive operations should be exempt from a requirement for EEBD. Concern has been expressed by our members that should a release occur in an operation where a Remote Control Locomotive is employed and that locomotive were known to be equipped with EEBD, an employee, working on the ground, may feel compelled to make his way through a chemical cloud to the locomotive to acquire and don the device rather than taking a safer course and possibly shorter route away from the release. Similarly, there may not be a justified need for an EEBD in traditional operations involving Yard and Local Freight trains as well. Like the Remote Control scenario described above, a crewman may feel the need to walk through a product mist to the locomotive to obtain and apply the device rather than escaping to a nearby yard office without one. Therefore, Yard and Local Freight assignments should also be exempt from a requirement for Emergency Escape Breathing Devices.

It is recommended that FRA carefully consider the materials for which EEBD will be required on freight trains carrying those products. As you know, our member railroads have a very strong and ongoing commitment to the safety of their employees. While the railroads will certainly meet the requirements of the forthcoming regulation, there is concern that there would be an expansion of the scope of this protection beyond the intent of the Act.

Finally, we ask that FRA allow at least two years from the effective date of the final rule for the railroads to be compliant with the regulation.

Very truly yours,



James P. Grady
Assistant Vice President, Technical Services

cc:	Alan Misiaszek	FRA
	Robert C. VanderClute	AAR
	Michael Rush	AAR
	Jeffrey F. Moller	AAR
	Thomas Streicher	ASLRRA

Appendix B: AAR's "Emergency Escape Breathing Device (EEBD) Specification M-1005 R1, January 20, 2010 Draft"

Emergency Escape Breathing Device (EEBD)
Specification
M-1005 R1
January 20, 2010 Draft

The following specifications for an emergency escape breathing apparatus approved by the National Institute of Occupational Safety and Health (NIOSH) or other National/International standards must be met in order for vendors to submit bids to Class 1 railroads. The intent of these specifications is to comply with the 2008 Rail Safety Improvement Act (RSIA), Section 413, including Class 1 railroad criteria.

Specifications

- NIOSH certification: Self-Contained Breathing Apparatus (SCBA) – Escape Only, or other National/International standard such as ISO 23269-1:2007(E): Emergency Escape Breathing Device (EEBD).
- Closed Circuit Escape Respirator (CCER) or Open Circuit Escape Respirator (OCER).
- At least 15-minute Approval Rating. Escape device must function for at least 15 minutes during 3 mph treadmill tests and 30 minutes for stationary tests.
- All materials used in the product must be resistant to IDLH levels of gaseous chlorine, anhydrous ammonia, and other toxic inhalation hazard (TIH) substances. Evidence of at least preliminary materials testing results must be submitted with bids.
- EEBD shall provide respiratory, head, and neck protection when tested at challenge concentrations of 10,000 ppm anhydrous ammonia and chlorine gas. Test results must be submitted with bid.
- Hood must be of sufficient size to cover head and neck of larger than average head size.
- EEBD and mount device design must be sufficiently small (depth*width*height, 5"*8"*10") and light enough (6 lbs. or less) to allow easy mounting inside locomotive cabs and easy access during an emergency. The wall mount case shall be bright safety orange and marked with a photo luminescent label with the text "Emergency Escape Breathing Device". Mounting specifications, CAD drawings and non-working full size product mock-ups must be submitted with bids.
- The mount device window must be clear and allow easy oxygen gauge visibility.
- Time-Stamped seal for security on device and plastic tamper tie on mount device that can be easily identified when broken.
- THE EEBD must have a small RFID tag attached to the EEBD facing outward in the mount device to facilitate an RFID handheld reader
- EEBD must provide evidence of impact and vibration resistance using an accelerated random vibration test using a typical locomotive cab profile. Escape device performance and mounting device structural integrity tests must represent a 15 year service life assuming a 50% duty cycle. Vibration test results must be submitted with bid.
- EEBD shall be belt wearable, without activating the EEBD after removal from wall mount case.
- Training support is required and will include a video of various locomotive models and video portions including each Class 1 railroad. This escape system must interchange with all Class 1 railroads. Training must include:
    - Proper Donning Techniques
    - Maintenance Requirements
    - Inspection Requirements
    - Typical Scenarios for Use
    - Training Requirements
    - Hands-on and face-to-face train-the-trainer seminars for railroad Train Service trainers at convenient dates and locations to be determined.

Appendix C: "UTU DISCUSSION DOCUMENT"

UTU DISCUSSION DOCUMENT

ALL TRAINS OPERATING IN RAIL CORRIDORS WHERE FREIGHT TRAINS CARRY HAZARDOUS MATERIALS THAT POSE AN INHALATION HAZARD IN THE EVENT OF A RELEASE SHALL BE EQUIPPED WITH EMERGENCY ESCAPE BREATHING DEVICES.

Emergency escape breathing apparatus ("EEBA") needs to be placed on all occupied locomotives which operate over a corridor where freight trains carry hazardous materials that pose an inhalation hazard in the event of a release. This would necessarily include heavily travelled rail corridors, as well as heavily populated areas. The nation's railroads transport many kinds of hazardous materials across the U.S., and can be part of almost any freight train. Therefore, the interests of safety mandate that every train in those areas be equipped with a sufficient number of EEBAs. The heavily travelled rail corridors are a particular concern. While the Graniteville, SC accident in 2008 prompted the congressional mandate, the potential for even more serious consequences exist where there are numerous train operations. It should not matter that a particular train does not at the moment contain haz mat cars that pose an inhalation hazard if released. It is likely that the train will encounter a train that does, and may need assistance from that crew. One needs to keep in mind that the exposure from such a release can extend many miles. Certainly, a train crew on a train in the vicinity of such a release is at risk.

The possibility that a train to train collision could occur with one train not containing hazmat and not equipped with the necessary EEBAs is the major concern. In corridors that operate many freight trains each day containing hazmat, the risk for all crew members working in that corridor are about the same, for crew members on the train that contain the hazmat, and the crew members on other trains that might not contain hazmat but meet and pass trains that do.

Also, it will become a logistics nightmare to keep moving the EEBAs from one train to another. For example, assume train A contains chlorine gas and requires EEBAs. When the haz mat cars are removed from the train, what is to become of the EEBAs? Should they stay with the locomotive, or are they to be removed? If the locomotive travels to another terminal or industry and again picks up other haz mat cars, does the railroad need to keep ferrying EEBAs from one locomotive to another? The answer is that makes no practical sense, and it likely would lead to many instances where the train is required to leave the terminal or industry without the protections.

The above should be evaluated with similar considerations as contained in FRA's rulemaking in Docket FRA-2007-28573, which covered routing of hazardous materials, primarily including PIH materials. Under the regulation, a railroad is required to analyze 27 factors that may affect the possibility of a catastrophic release. Both of the factors mentioned above are among the factors to be considered. It is noted also that the FRA stated: "The primary safety and security concern related to the transportation of hazardous materials by rail is preventing a potentially lethal spill or release from occurring in close proximity to heavily populated areas, events or venues with large numbers of people in attendance, iconic buildings and landmarks or environmentally sensitive areas." The focus of that rulemaking was not the protection of employees, but rather the protection of the public. The present rulemaking mandated by Congress requires employee safety. Both of these regulations should be considered together.

Rail corridors and branch lines that are not used for transporting hazmat shipments would not require EEBAs on occupied locomotives.

Therefore, in order to assure the employees are protected, each occupied locomotive operating over a corridor in which trains transporting haz mat cars containing gasses that would pose an inhalation hazard should be required to be equipped with the EEBAs at all times.

```
SEC. 413. EMERGENCY ESCAPE BREATHING APPARATUS.

    (a) Amendment.--Subchapter II of chapter 201, as amended by section
409 of this division, is further amended by adding at the end the
following new section:
``Sec. 20166. Emergency escape breathing apparatus

    ``Not <<NOTE: Deadline. Regulations.>> later than 18 months after
the date of enactment of the Rail Safety Improvement Act of 2008, the
Secretary of Transportation shall prescribe regulations that require
railroad carriers--
            ``(1) to provide emergency escape breathing apparatus
        suitable to provide head and neck coverage with respiratory
        protection for all crewmembers in locomotive cabs on freight
        trains carrying hazardous materials that would pose an
        inhalation hazard in the event of release;
            ``(2) to provide convenient storage in each freight train
        locomotive to enable crewmembers to access such apparatus
        quickly;
            ``(3) to maintain such equipment in proper working
        condition; and
            ``(4) to provide their crewmembers with appropriate training
        for using the breathing apparatus.''.

    (b) Conforming Amendment.--The chapter analysis for chapter 201, as
amended by section 409 of this division, is amended by inserting after
the item relating to section 20165 the following:

``20166. Emergency escape breathing apparatus.''.
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[FR Doc. 2010–24732 Filed 10–4–10; 8:45 am]
BILLING CODE 4910–06–C

Notices

Federal Register
Vol. 75, No. 192
Tuesday, October 5, 2010

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

September 30, 2010.

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) 720–8681.

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.

Agricultural Marketing Service

Title: Fruit and Vegetable Market News Reports

OMB Control Number: 0581–0006

Summary of Collection: Section 203(g) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621) directs and authorizes the collection of information and disseminating of marketing information including adequate outlook information on a market-area basis for the purpose of anticipating and meeting consumer requirements, aiding in the maintenance of farm income and bringing about balance between production and utilization of agriculture products. Market News provides all interested segments of the market chain with market information which tends to equalize the competitive position of all market participants. The fruit and vegetable industries, through their organizations, or government agencies, present formal requests that the Department of Agriculture issue daily, weekly, semi-monthly, or monthly market news reports on various aspects of the industry.

Need and Use of the Information: AMS will collect information for the production of Market News reports that are then available to the industry and other interested parties in various formats. Information is provided on a voluntary basis and collected in person through face-to-face interviews and by confidential telephone throughout the country by market reporters.

Description of Respondents: Farms; Business or other for-profit.

Number of Respondents: 4,013.

Frequency of Responses: Reporting: Daily; Weekly; Monthly.

Total Burden Hours: 56,861.

Agricultural Marketing Service

Title: Poultry Market News Report.

OMB Control Number: 0581–0033.

Summary of Collection: The Agricultural Marketing Act of 1946, legislates that USDA shall "collect and disseminate marketing information * * *" and "* * * collect, tabulate, and disseminate statistics on marketing agricultural products, including, but not restricted to statistics on marketing supplies, storage, stocks, quantity, quality, and condition of such products in various positions in the marketing channel, use of such products, and shipments and unloads thereof." The mission of Market New is to provide current unbiased, factual information to all members of the Nation's agricultural industry, from farm to retailer.

Need and Use of the Information: Information is used by the private sector to make economic decisions to establish market values for application in contracts or settlement value, and to address specific concerns or issues related to trade agreements and disputes as well as being used by educational institutions, specifically, agricultural colleges and universities. Government agencies such as the Foreign Agricultural Service, Economic Research Service and the National Agricultural Statistics Service use market news data in the performance of their missions. Also, the poultry and egg industry uses the data to help determine future production and marketing projections. The absence of these data would deny primary and secondary users information that otherwise would be available to aid them in their production and marketing decisions, analyses, research and knowledge of current market conditions. The omission of these data could adversely affect prices, supply, and demand.

Description of Respondents: Business or other for-profit; Farms.

Number of Respondents: 1,743.

Frequency of Responses: Reporting: Weekly; Monthly.

Total Burden Hours: 17,999.

Agricultural Marketing Service

Title: Regulations for Voluntary Grading of Poultry Products and Rabbit Products, 7 CFR Part 70.

OMB Control Number: 0581–0127

Summary of Collection: The Agricultural Marketing Act of 1946 (60 Stat. 1087–1091, as amended; 7 U.S.C. 1621–1627) (AMA) directs and authorizes the Department to develop standards of quality, grades, grading programs, and services to enable a more orderly marketing of agricultural products so trading may be facilitated and so consumers may be able to obtain products graded and identified under USDA programs. Regulations in 7 CFR Part 70 provide for a voluntary program for grading poultry and rabbits on the basis of U.S. classes, standards and grades. The Agricultural Marketing Service (AMS) carries out the regulations, which provide a voluntary

program for grading poultry and rabbit products.

Need and Use of the Information: This is a voluntary program on a fee for service basis. Respondents need to request or apply for the specific service they want and in doing so they provide information. The information is needed to administer the program, assess the cost of providing service, and to assure graded poultry and rabbits are properly labeled. Without this information the agency could not ensure properly labeled poultry and rabbit products and the integrity of the USDA grade mark if each new label was not submitted for approval.

Description of Respondents: Business or other for profit; Farms.

Number of Respondents: 372.

Frequency of Responses: Reporting: Daily; Monthly; Semi-annually; Annually; Other: On occasion.

Total Burden Hours: 1,861.

Agricultural Marketing Service

Title: Export Fruit Regulations.

OMB Control Number: 0581–0143.

Summary of Collection: Fresh apples and grapes grown in the United States shipped to any foreign destination must meet minimum quality and other requirements established by regulations issued under the Export Apple Act (7 CFR Part 33) and the Export Grape and Plum Act (7 CFR Part 35). These Acts were designed to promote the foreign trade of the United States in apples and grapes; to protect the reputation of these American-grown commodities; and to prevent deception or misrepresentation of the quality of such products moving in foreign commerce. Plum provisions in the marketing order were terminated in 1991. The regulation issued under the Export Grape and Plum Act (7 CFR Part 35) cover fresh grapes grown in the United States and shipped to foreign destinations, except Canada. Apples and grapes exported to Canada are exempt from the Acts' regulations due to Canada's import requirements.

Need and Use of the Information: Persons who ship fresh apples and grapes grown in the U.S. to foreign destinations must have such shipment inspected and certified by Federal or Federal-State Inspection Service (FSIS) inspectors. Agriculture Marketing Service administers the FSIS. Official FSIS inspection certificates and phytosanitary certificates issued by USDA's Animal and Plant Health Inspection Service provide the needed information for USDA. Export carriers are required to keep on file for three years copies of inspection certificates for apples and grapes.

Description of Respondents: Business or other for-profit; Farms.

Number of Respondents: 100.

Frequency of Responses: Recordkeeping; Reporting; On occasion, Monthly, Annually.

Total Burden Hours: 25.

Agricultural Marketing Service

Title: Customer Service Survey for USDA—Donated Food Products.

OMB Control Number: 0581–0182.

Summary of Collection: Each year the Agricultural Marketing Service (AMS) procures about $700 million dollars of poultry, livestock, fruit, and vegetable products for the school lunch and other domestic feeding programs under authority of 7 CFR 250, Regulations for the Donation of Food for Use in the United States, its Territories and possessions and areas under its jurisdiction. To maintain and improve the quality of these products, AMS has sought to make this process more customer-driven and therefore is seeking opinions from the users of these products. Customers that use USDA-procured commodities to prepare and serve meals retrieve the AMS–11 cards from the boxes and use them to rate their perception of product flavor, texture, and appearance as well as overall satisfaction.

Need and Use of the Information: AMS will use three different versions of the AMS–11, "Customer Opinion Postcard," AMS–11A for Poultry Programs; AMS–11B for Livestock and Seed Programs and AMS–11C for Fruit and Vegetable Programs to collect information on the product type, production lot, and identify the location and type of facility in which the product was served. USDA program managers will use survey responses to maintain and improve product quality through the revision of USDA commodity specifications and follow-up action with producers of designated production lots.

Description of Respondents: State, Local or Tribal Government; Not-for-profit institutions.

Number of Respondents: 8,400.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 700.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2010–24931 Filed 10–4–10; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Federal Excess Personal Property (FEPP) and Firefighter Property (FFP) Program Cooperative Agreements

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the new information collection, Federal Excess Personal Property (FEPP) and Firefighter Property (FFP) program Cooperative Agreements.

DATES: Comments must be received in writing on or before December 6, 2010 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to: USDA, Forest Service, Attn: Melissa Frey, Fire and Aviation Management (F&AM), 1400 Independence Ave., SW., Mailstop 1107, Washington, DC 20250. Comments also may be submitted via e-mail to: *mfrey@fs.fed.us.*

The public may inspect comments received at USDA Forest Service, F&AM, Room 2SO, 201 14th St., SW., Washington, DC, during normal business hours. Visitors are encouraged to call ahead to 202–206–1483 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Melissa Frey, Fire and Aviation Management, 202–205–1090. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: *Title:* Federal Excess Personal Property (FEPP) and Firefighter Property (FFP) Cooperative Agreements.

OMB Number: 0596–NEW.

Type of Request: NEW.

Abstract: Federal Excess Personal Property (FEPP) and Firefighter Property (FFP) program Cooperative Agreements programs are available to state forestry agencies. The program provides participating state agencies with surplus Department of Defense and other federal agencies equipment and supplies to be used in firefighting and emergency services. The FEPP program loans property to the state who in turn sub-loans the equipment and supplies to fire departments. The FFP program transfers ownership of the equipment to either

the state agency or the individual fire department.

A cooperative agreement collects information from the participating state agency and outlines the requirements and rules for the cooperation. Each state forestry agency shall provide an Accountable Officer who will be responsible for the integrity of the program within their respective state. For this reason, FEPP and FFP collect the state forestry agency contact information, the information of the Accountable Officer, and the requirements of participation in the FEPP and FFP programs.

A cooperative agreement will be prepared by each state forestry agency that desires to participate in one or both of the programs. Participating state agencies must submit separate agreements if they desire to be participants in both programs. Agreements will be processed and maintained at the United States Department of Agriculture, Forest Service, Fire and Aviation Management, Partnerships, Cooperative Programs branch in each Forest Service Regional Office.

The authority to provide surplus supplies to state agencies comes from Federal Property and Administration Services Act of 1949, 40 U.S.C., Sec 202. Authority to loan excess supplies comes from 10 U.S.C., Subtitle A, Part IV, Chapter 153, 2576b grants the authority for the FFP program.

Estimate of Annual Burden: 1 hour.

Type of Respondents: State Foresters.

Estimated Annual Number of Respondents: 10.

Estimated Annual Number of Responses per Respondent: 2.

Estimated Total Annual Burden on Respondents: 20 hours.

Comment is Invited:

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: September 28, 2010.

John Phipps,

Associate Deputy Chief, State and Private Forestry.

[FR Doc. 2010–24879 Filed 10–4–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2008–0098]

Notice of Availability of Biotechnology Quality Management System Audit Standard and Evaluation of Comments

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has developed an audit standard for its biotechnology compliance assistance program. The audit standard, which was made available in draft form for comment in an earlier notice, will be used by participating regulated entities to develop and implement sound management practices, thus enhancing compliance with the regulatory requirements for field trials and movement of genetically engineered organisms in 7 CFR part 340. We are also making available a document containing our evaluation of the comments we received on the draft audit standard.

FOR FURTHER INFORMATION CONTACT: Dr. Edward Jhee, Chief, Compliance Assistance Branch, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 91, Riverdale, MD 20737–1236; (301) 734–6356, *e-mail: edward.m.jhee@aphis.usda.gov.* To obtain copies of the audit standard or our evaluation of comments submitted on the draft audit standard, contact Ms. Cindy Eck at (301) 734–0667, *e-mail: cynthia.a.eck@aphis.usda.gov.* Those documents may also be viewed on the APHIS Web site at the address provided at the end of this document.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) regulates the introduction—the importation, interstate movement, and environmental release—of genetically engineered (GE) organisms that are, or may be, plant pests. In September 2007, APHIS' Biotechnology Regulatory Services announced it was developing a voluntary, audit-based compliance assistance program known as the Biotechnology Quality Management System Program (BQMS Program) to assist regulated entities in achieving and maintaining compliance with the regulatory requirements for field trials and movements of GE organisms in 7 CFR part 340.

Under the BQMS Program, APHIS provides support for an entity's voluntary adoption of a customized biotechnology quality management system (BQMS) to improve their management of domestic research and development of regulated GE organisms. The BQMS audit standard provides criteria for the development, implementation, and objective evaluation of the entity's BQMS.

On June 4, 2009, APHIS published a notice [1] in the **Federal Register** (74 FR 26831–26832, Docket No. APHIS–2008–0098) announcing the availability of the BQMS draft audit standard. Comments on the BQMS draft audit standard were to have been received on or before August 3, 2009. APHIS subsequently published a notice in the **Federal Register** on August 24, 2009 (74 FR 42644, Docket No. APHIS–2008–0098), reopening the comment period on the draft audit standard for an additional 60 days ending October 23, 2009. APHIS solicited comments on the draft audit standard in general and sought specific input on the following four questions:

1. Do the critical control points in Requirement 7 of the draft audit standard identify all areas and elements that organizations should focus on in order to maintain compliance with the regulatory requirements under 7 CFR part 340?

2. Is the draft audit standard consistent with current best practices used by the regulated community?

3. Can the public identify incentives USDA might employ to encourage participation in the voluntary program by commercial industry as well as academic institutions?

4. The BQMS is designed to be flexible according to the size of the participating organization. Is this flexibility apparent in the draft audit standard?

APHIS also received input on the draft audit standard from organizations

[1] All notices mentioned in this docket, as well as comments received and supporting and related materials, can be viewed at *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS–2008–0098.*

that participated in a BQMS pilot development project conducted during 2009. Five organizations participated in the pilot development project and assisted APHIS in evaluating the draft audit standard, program training sessions, and audit procedures established for the BQMS Program.

Following the pilot development project and after evaluating the comments submitted on the BQMS draft audit standard, APHIS made adjustments to the BQMS audit standard. You may view the public comments submitted on the draft audit standard, APHIS' evaluation of the comments received, and the revised BQMS audit standard on the Regulations.gov Web site (see footnote 1 for a link).

The revised audit standard and the comment evaluation document, as well as additional information about the BQMS Program, may be found on the APHIS Web site at *http://www.aphis.usda.gov/biotechnology/news_bqms.shtml*. Copies of those documents may also be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**.

Done in Washington, DC, this 29th day of September 2010.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–24995 Filed 10–4–10; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Basin Electric Power Cooperative: South Dakota PrairieWinds Project

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Availability of Record of Decision.

SUMMARY: The Rural Utilities Service, hereinafter referred to as RUS and/or the Agency, has issued a Record of Decision (ROD) for the Environmental Impact Statement (EIS) for the proposed South Dakota PrairieWind Project (Project) in Aurora, Bule and Jerauld Counties, South Dakota. The Administrator of RUS has signed the ROD, which is effective upon signing. The EIS was prepared pursuant to the National Environmental Policy Act of 1969 (NEPA) (U.S.C. 4231 et seq.) and in accordance with the Council on Environmental Quality's (CEQ) regulations for implementing the procedural provisions of NEPA (40 CFR Parts 1500–1508), RUS's NEPA implementing regulations (7 CFR Part 1794), and the Western Area Power Administration's (Western) NEPA implementing regulations (10 CFR Part 1021). RUS and Western are serving as co-lead agencies in preparation of the EIS as defined at 40 CFR 1501.5. Each agency is issuing a separate ROD for the project. The purpose of the EIS was to evaluate the potential environmental impacts of and alternatives to Basin Electric Power Cooperative's (Basin Electric) application for a RUS loan and a Western interconnection agreement to construct the proposed Project. The proposed Project's facility would include a new 151.5-megawatt wind-powered generation facility.

ADDRESSES: To obtain copies of the ROD, or for further information, contact: Mr. Dennis Rankin, Environmental Protection Specialist, USDA, Rural Utilities Service, 1400 Independence Avenue, SW., Stop 1571, Room 2239–S, Washington, DC 20250–1571, *telephone:* (202) 720–1453, *fax:* (202) 690–0649, or *e-mail: dennis.rankin@wdc.usda.gov.* A copy of the ROD can be viewed online at: *http://www.usda.gov/rus/water/ees/eis.htm.*

SUPPLEMENTARY INFORMATION: Basin Electric's proposed Project is to construct, own, operate, and maintain the Project. The proposed Project includes a 151.5-megawatt (MW) nameplate capacity wind-powered energy generation facility that would feature 101 wind turbine generators; 6,000-square-foot operations and maintenance building and fence perimeter; 64 miles of underground communication system and electrical collector lines (within the same trench); 34.5-kilovolt (kV) to 230-kV collector substation and microwave tower; 11-mile-long overhead 230-kV transmission line; temporary equipment/material storage or lay-down areas; temporary crane walks; and 81 miles of new and/or upgraded service roads to access the facilities in Aurora, Brule and Jerauld Counties in eastern South Dakota. The purpose for the proposed Project is to meet Basin Electric's load growth responsibilities, State mandated Renewable Portfolio Standards and Renewable Energy Objectives and renewable energy goals. In accordance with NEPA, the CEQ regulations for implementing the procedural provisions of NEPA, and applicable agency NEPA implementing regulations, RUS and Western prepared an EIS to assess the potential environmental impacts associated with the proposed Project. The decision being documented in RUS's ROD is that the Agency agrees to consider, subject to loan approval, funding the proposed Project at the Crow Lake location. More details regarding RUS's regulatory authority, rationale for the decision, and compliance with applicable regulations are included in the ROD. Because two distinct federal actions are being proposed, RUS and Western decided to issue separate RODs.

On April 7, 2009, RUS and Western published in the **Federal Register** a Notice of Intent to prepare an EIS for the proposed Project. The U.S. Environmental Protection Agency acknowledged receipt of the Draft EIS on January 15, 2010. The 45-day comment period ended on March 1, 2010. A public hearing to receive comments on the Draft EIS was held in Chamberlain, South Dakota, on February 11, 2010. All comments received were addressed in the Final EIS, The U.S. Environmental Protection Agency acknowledged receipt of the Final EIS on July 30, 2010. The 30-day review period ended on August 28, 2010. Two comment letters were received; they were addressed in RUS's ROD.

After considering various ways to meet its purpose and need, Basin Electric identified construction of the proposed Project as its best course of action. This EIS considered four alternative methods to provide renewable energy and six alternative site locations. These alternatives were evaluated in terms of cost-effectiveness, technical feasibility, and environmental factors (*e.g.,* soils, topography and geology, water resources, air quality, biological resources, the acoustic environment, recreation, cultural and historic resources, visual resources, transportation, farmland, land use, human health and safety, the socioeconomic environment, environmental justice, and cumulative effects).

The EIS analyzes in detail the No Action Alternative and the Action Alternative (construction of the Project) at two separate locations: The Crow Lake site (approximately 36,000 acres 15 miles north of the City of White Lake within Brule, Aurora and Jerald Counties, South Dakota), and the Winner site (approximately 83,000 acres eight miles south of the City of Winner in Tripp County, South Dakota). The No Action Alternative would not meet the state's and Basin Electric's renewable energy goals. The resources or environmental factors that could be affected by the proposed Project were evaluated in detail in the EIS. These issues are summarized in Table ES–1: "Summary of Potential Impacts of South Dakota PrairieWinds Project," of the EIS.

Based on an evaluation of the information and impact analyses presented in the EIS, including the evaluation of all alternatives, and in consideration of the Agency's NEPA implementing regulations, Environmental Policies and Procedures, as amended (7 CFR Part 1794), RUS finds that the evaluation of reasonable alternatives is consistent with NEPA. The Agency has selected the Action Alternative at Crow Lake site as its preferred alternative. This Notice concludes RUS's compliance with NEPA and the Agency's "Environmental Policies and Procedures."

Dated: September 29, 2010.

James R. Newby,

Acting Administrator, Rural Utilities Service.

[FR Doc. 2010–24993 Filed 10–4–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Forest Service

Admiralty National Monument: Tongass National Forest; Alaska; Expansion of Tailings Disposal Facility, Greens Creek Mine Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent To Prepare an Environmental Impact Statement.

SUMMARY: The U.S. Department of Agriculture, Forest Service, will prepare an Environmental Impact Statement (EIS) to consider the proposal to create additional tailings and waste rock disposal capacity and related infrastructure at the Greens Creek Mine on northern Admiralty Island on the Admiralty Island National Monument, Tongass National Forest. The proposed action provides for an expansion of the existing tailings facility area to the south for an increase of approximately 200 acres. This would include an increase of about 60 acres for tailings placement and an addition of approximately 140 acres for supporting infrastructure.

DATES: A scoping letter will be mailed out in early October. Individuals who want to receive a copy of this mailing or who want to be on the project mailing list should contact the Admiralty Island National Monument at the address below. Comments concerning the scope of the analysis must be received by November 4, 2010. The Draft EIS is projected to be filed with the Environmental Protection Agency (EPA) in the summer of 2011 and will begin a 45 day public comment period. The Final Environmental Impact Statement and the Record of Decision are expected to be published in the spring of 2012.

ADDRESSES: You may comment on the project in the following ways: Send written comments to the Admiralty Island National Monument, Tongass National Forest, Attn: Greens Creek Tailings Expansion, 8510 Mendenhall Loop Road, Juneau, AK 99801. Hand delivered comments may be taken to this same address. Comments may also be sent via e-mail to *comments-alaska-tongass-admiralty-national-monument@fs.fed.us* with Greens Creek Tailings EIS on the subject line, or via facsimile to 907–586–8808. Include your name, address and organization name if you are commenting as a representative of an organization.

FOR FURTHER INFORMATION CONTACT: Questions about the proposal and the EIS should be directed to Chad VanOrmer, District Ranger, Admiralty Island National Monument, 8510 Mendenhall Loop Road, Juneau, AK 99801, telephone (907) 789–6202, or Sarah Samuelson, Interdisciplinary Team Leader, Tongass National Forest Minerals Program Leader, 8510 Mendenhall Loop Road, Juneau, AK 99801, telephone (907) 789–6274. 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

Hecla Greens Creek Mining Company (HGCMC) operates an underground polymetallic mine located approximately 18 miles southwest of Juneau, Alaska on the northern part of Admiralty Island in Southeast Alaska. Exploration work at the site began in the mid-1970s, with the first exploration portal to go underground started in 1981. Before mining operations began the Forest Service completed a *Greens Creek Final Environmental Impact Statement* (1983) and Record of Decision for overall development and operations of the mine. Full scale mine development began in 1987.

The original General Plan of Operations (GPO) called for underground mining with the ore crushed and concentrated in the mill near the portal. The tailings were to be slurried in a pipeline parallel to the road corridor to a disposal site at the Cannery Muskeg. In 1986 the new owners of the mine (Amselco) decided to change the method of tailings disposal; instead of transporting tailings in a slurry via a pipeline, the owners proposed to truck "dry tailings" to a smaller area at the same Cannery Muskeg for disposal. In 1988, the Forest Service completed the *Environmental Assessment for Proposed Changes to the General Plan of Operation for the Development and Operation of the Greens Creek Mine* (1988) and approved the dry-stack tailings method for the Greens Creek Mine.

In 1990 new mine owners (Kennecott Greens Creek Mining Company—KGCMC) sought approval for additional waste rock disposal capacity. In 1991, the Forest Service began a third National Environmental Policy Act (NEPA) review, the *Environmental Assessment for Additional Waste Rock Disposal Capacity at Greens Creek Mine* (1992).

In 2001, KGCMC submitted an application to the Forest Service requesting a modification of the then-current GPO for expansion of the existing tailings facility. Based on known ore reserves and the success of the exploration program, it was estimated that the approved tailings facility could not contain tailings associated with projected future operations. In 2003, the *Greens Creek Tailings Disposal Final Environmental Impact Statement* (2003) *and ROD* were completed; this provided for a modification of the GPO to allow for an expansion of the tailings disposal facility.

Purpose and Need for Action

The Forest Service has been requested by HGCMC to consider additional tailings expansion at the Greens Creek Mine. With continued positive exploration results, improved metal prices, and ongoing operational efficiencies, there is a need for additional tailings and waste rock disposal and related infrastructure at the Greens Creek Mine to allow for continuous site operations in a safe, environmentally sound, technically feasible, and economically viable manner, while being in compliance with regulatory requirements. The purpose of this EIS is for the Forest Service to consider certain changes to the approved HGCMC General Plan of Operations regarding tailings and waste rock disposal and related infrastructure. The existing tailings facility is considered sufficient to provide for HGCMC needs until 2014 but HECLA has indicated that preparation work for tailings must begin during the 2012 construction season.

Proposed Action

HGCMC is proposing a tailings expansion which will accommodate an

estimated additional 20 million tons of tailings and waste rock material. This volume would allow capacity for ongoing operation and project reserves, plus provide volume for waste rock co-disposal and an expanded resource base as identified needs are proven with on-site exploration activities. An estimated 200 additional acres are requested to accommodate this expansion need; approximately 60 acres will accommodate the tailings and waste rock co-disposal and about 140 acres to provide space for supporting infrastructure.

Public Participation and Scoping

This project was placed on the July 2010 Schedule of Proposed Action. This Notice of Intent initiates the scoping process which guides the development of the EIS. Public participation will be an integral component of the study process and will continue to be especially important at several points during the analysis. The Forest Service will be seeking information, comments and assistance from tribal governments and corporations, Federal, State and local agencies, individuals, and organizations that may be interested in, or affected by, the proposed activities. The mailing list will include: Those who have requested to be on this project mailing list, outfitters/guides that have permits within or adjacent to this area; and local, State and federally-recognized tribal governments and corporations and federal government agencies. The scoping package will be available at future public open house meetings to be held in mid-October in both Juneau, Alaska and Angoon, Alaska.

Based on results of scoping and the resource capabilities within the project area, alternatives, including the "No Action" alternative will be developed for the Draft EIS. Subsistence hearings, as provided for in Section 810 of the Alaska National Interest Lands Conservation Act (ANILCA) will be conducted, if necessary, during the comment period on the Draft EIS.

The comment period on the Draft EIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**. It is important that reviewers provide their comments at such times and in such a way that they are useful to the Agency's preparation of the Final EIS. Comments on both scoping and eventually, the Draft EIS, should be provided prior to the close of the comment period and should clearly articulate the reviewers concerns and contentions. The submission of timely and specific comments can affect a reviewer's ability to participate in a subsequent administrative review or judicial review. 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 (Authority: 40 CFR 1501.7 and 1508.22; 36 CFR 220.5; also Forest Service Handbook 1909.15, Section 21). Comments submitted anonymously will not provide the respondent with standing to participate in subsequent administrative review or judicial review. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Requesters should be aware that, under FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, where the request is denied, the Forest Service will return the submission and notify the requester that the comments may be resubmitted with or without name and address within 7 days.

To assist the Forest Service in identifying and considering issues and concerns of the proposed action, comments during the scoping and comments on the Draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the Draft EIS. Comments may also address the adequacy of the Draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of NEPA at 40 CFR 1503.3 in addressing these points.

Lead and Cooperating Agencies

The Forest Service is the lead agency for this environmental analysis. The following agencies have agreed to participate as cooperating agencies:

- U.S. Army Corps of Engineers.
- U.S. Environmental Protection Agency.
- State of Alaska—lead by the Office of Project Management and Permitting.
- The City and Borough of Juneau.

Responsible Official

Forrest Cole, Forest Supervisor, Tongass National Forest, Federal Building, Ketchikan, Alaska 99901 is the responsible official.

Nature of Decision To Be Made

The Forest Supervisor is the responsible official for this action and will decide whether or not to amend the approved GPO. The decision will be based on information that is disclosed in the Final EIS. The responsible official will consider the comments, responses, disclosure of environmental consequences, and applicable laws, regulations, and policies in making the decision and state the rationale in the Record of Decision.

Preliminary Issues

Tentative issues identified for the analysis in the EIS includes the potential long-term effects on water quality as a result of the project expansion; both during operation and after closure. A second issue involves how the proposed expansion area in and adjacent to the National Monument boundary may affect the "Monument values" including wetlands, habitat, and the intrinsic characteristics that warranted the Monument's initial establishment.

Permits or Licenses Required

Permits required for implementation include the following:

1. U.S. Army Corps of Engineers

- Clean Water Act (CWA) Section 404 wetlands permit for the discharge of dredge or fill material into waters of the United States, including jurisdictional wetlands.

2. U.S. Environmental Protection Agency

- Review Spill Prevention Control and Countermeasure Plan.

3. State of Alaska, Department of Natural Resources

- Reclamation Plan Approval.
- State water rights permits for water withdrawals.

4. Office of Project Management & Permitting (DNR)

- Coastal Zone Consistency Determination under the Coastal Zone Management Act and the Alaska Coastal Management Program Act of 1977.

5. State of Alaska, Department of Environmental Conservation

- Waste Management Permit covering disposal of mine tailings, waste rock, overburden, and solid waste, management of ground water, storage and containment of hazardous chemicals, facility reclamation and facility closure.
- Air Quality Permit to Operate (Title V).
- CWA Section 401 certifications of reasonable assurance for COE/Section 404 permit.

• Alaska National Pollution Discharge Elimination System Permit.

6. Alaska Department of Fish and Game

• Fish habitat permits for diversions and water withdrawals.

Dated: September 27, 2010.

Forrest Cole,

Forest Supervisor.

[FR Doc. 2010–24907 Filed 10–4–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

South River Watershed Dam No. 10A, Augusta County, VA

AGENCY: Natural Resources Conservation Service.

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 South River Watershed Dam No. 10A, Augusta 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 U.S. Environmental Protection Agency and to 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**.

[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].

Dated: September 24, 2010.

John A. Bricker,

State Conservationist.

[FR Doc. 2010–25014 Filed 10–4–10; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Forest Service

Bridger-Teton National Forest Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Bridger-Teton Resource Advisory Committee will meet in Cokeville, Wyoming. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose is to hold the first meeting of the newly formed committee.

DATES: The meeting will be held on October 25, 2010, and will begin at 6 p.m.

ADDRESSES: The meeting will be held at the Cokeville Town Hall, 110 Pine Street, Cokeville, WY. Written comments should be sent to Tracy Hollingshead, Bridger-Teton National Forest, 308 Hwy 189 North, Kemmerer, WY 83101. Comments may also be sent via e-mail to *thollingshead@fs.fed.us,* or via facsimile to 307–828–5135.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Bridger-Teton National Forest, Hwy 189 North, Kemmerer, WY 83101. Visitors are encouraged to call ahead to 307–877–4415 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Tracy Hollingshead, RAC coordinator, USDA, Bridger-Teton National Forest, Hwy 189 North, Kemmerer, WY 83101; (307) 877–4415; E-mail *thollingshead@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: (1) Introductions of all committee members and Forest Service personnel. (2) Selection of a chairperson by the committee members. (3) Receive materials explaining the process for considering and recommending Title II projects; and (4) Public Comment. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting.

Dated: September 29, 2010.

Tracy Hollingshead,

Designated Federal Officer.

[FR Doc. 2010–24909 Filed 10–4–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Nicolet Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: The Nicolet Resource Advisory Committee will meet at the Laona Ranger Station, Laona, Wisconsin. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose is to hold a meeting to review submitted project proposals.

DATES: The meeting will be held on November 3, 2010, and will begin at 9:30 a.m.

ADDRESSES: The meeting will be held at the Laona Ranger Station, 4978 Hwy 8 W, Laona, WI. Written comments should be sent to Penny McLaughlin, Chequamegon-Nicolet National Forest, 4978 Hwy 8 W, Laona, WI 54541. Comments may also be sent via e-mail to *pmclaughlin@fs.fed*.us or via facsimile to 715–674–2545.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Chequamegon-Nicolet National Forest Office, 4978 Hwy 8 West, Laona, WI

54541. Visitors are encouraged to call ahead to 715–674–4481 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Penny McLaughlin, RAC Coordinator, USDA, Chequamegon-Nicolet National Forest, 4978 Hwy 8 W, Laona, WI 54541; 715–674–4481; e-mail: *pmclaughlin@fs.fed.us*.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Serve (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: (1) Review and recommend the project proposal submissions for Title II projects; and (2) Public Comment. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting.

Dated: September 27, 2010.

Paul I. V. Strong

Forest Supervisor.

[FR Doc. 2010–25004 Filed 10–4–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. DA–10–03; AMS–DA–09–0053]

Milk for Manufacturing Purposes and Its Production and Processing; Requirements Recommended for Adoption by State Regulatory Agencies

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice; request for comments.

SUMMARY: This document proposes to amend the recommended manufacturing milk requirements (Recommended Requirements) by raising the maximum allowable somatic cell count in producer herd goat milk from 1,000,000 cells per milliliter to 1,500,000 cells per milliliter. This proposal was initiated at the request of the National Association of Dairy Regulatory Officials (NADRO) and was developed in cooperation with NADRO, dairy trade associations, and producer groups. This will ensure that goat milk can continue to be shipped and recognizes that goats have a need for different regulatory limits for somatic cells than cows.

DATES: Submit written or electronic comments on or before December 6, 2010.

ADDRESSES: You may use any of the following methods to file comments on this action:

By Mail: Reginald Pasteur, Marketing Specialist, Standardization Branch, Dairy Programs, STOP 0230 (Room 2746–South Building), Agricultural Marketing Service, U.S. Department of Agriculture (USDA), 1400 Independence Avenue, SW., Washington, DC 20250–0230.

By Fax: (202) 720–2643.

By e-mail: Via the electronic process available at the Federal eRulemaking portal at *http://www.regulations.gov.*

Comments should reference the docket number and the date and page number of this issue of the **Federal Register**. Any comments received may be inspected at the above address during regular business hours (8 a.m.–4:30 p.m.) or may be accessed via the Internet at *http://www.regulations.gov.*

The current Recommended Requirements are available either from the above mailing address or by accessing the following internet address: *http://www.ams.usda.gov/dairy/manufmlk.pdf.* The proposed changes to the Recommended Requirements are also available from the above mailing address or by accessing the following internet address: *http://www.ams.usda.gov/dairy/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Reginald Pasteur, Marketing Specialist, Standardization Branch, Dairy Programs, AMS, USDA, telephone (202) 720–7473 or e-mail *Reginald.pasteur@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: Under the authority of the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), the U.S. Department of Agriculture maintains a set of model regulations relating to quality and sanitation requirements for the production and processing of manufacturing grade milk. These Recommended Requirements are developed by AMS and recommended for adoption and enforcement by the various States that regulate manufacturing grade milk. The purpose of the model requirements is to promote uniformity in State dairy laws and regulations relating to manufacturing grade milk.

In consultation with representatives from NADRO, State regulatory agencies, Food and Drug Administration (FDA), and dairy industry trade associations, USDA prepared the Recommended Requirements to promote uniformity in State dairy laws and regulations for manufacturing grade milk. To accommodate changes that occur in the dairy industry, NADRO and various State officials request USDA to update the Recommended Requirements periodically.

During its July 2009 annual meeting, NADRO passed a resolution requesting USDA to raise the maximum allowable somatic cell count for producer herd goat milk from 1,000,000 cells per milliliter to 1,500,000 cells per milliliter to provide consistency with the current requirements in place for Grade A producer herd goat milk. Due to inherent difference between cows and goats, goat milk with a somatic cell of 1.5 million cells per milliliter can be produced from a healthy, non-mastitic udder and therefore, is quality milk. The need for a separate standard for goat milk was recognized by the National Conference on Interstate Milk Shipments (NCIMS) and was raised to 1.5 million cells per milliliter at their 2009 conference. This proposed change will align the Recommended Requirements with the Grade A requirements for goat milk. AMS reviewed this resolution and developed a draft proposal that identified the changes associated with this request. This draft was provided to State regulatory officials and dairy trade association representatives for informal discussion prior to publication in the **Federal Register**. AMS is now soliciting comments on the proposed notice to the Recommended Requirements.

The requirements of Executive Order 13132, Federalism, were considered in developing this notice, and it has been determined that this action does not have substantial effects on the States (the relationship between the National Government and the States or on the distribution of power and responsibilities among the various levels of government). The adoption of the Recommended Requirements by State regulatory agencies is voluntary. States maintain the responsibility to establish dairy regulations and continue to have the option to establish regulations that are different from the Recommended Requirements. A State may choose to have requirements less restrictive or more stringent than the Recommended Requirements. Their decision to have different requirements would not affect the ability of milk producers to market milk or of processing plants to produce dairy products in their State. AMS is publishing this notice with a 60-day comment period to provide a sufficient time for interested persons to comment on the changes.

Based on information provided above, this notice seeks public comment on revising the somatic cell count for goat milk from 1,000,000 cells per milliliter to 1,500,000 cells per milliliter in sections C7 (9)(d) and C11 (e), (e)(2), and (f) of the Recommended Requirements.

Dated: September 30, 2010.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2010–24985 Filed 10–4–10; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Socioeconomics of Users and Non Users of Grays Reef National Marine Sanctuary.

OMB Control Number: None.

Form Number(s): NA.

Type of Request: Regular submission (request for review of a new information collection).

Number of Respondents: 248.

Average Hours per Response: Sanctuary users' and non-users' surveys, one hour; business operations' surveys, 3 hours.

Burden Hours: 276.

Needs and Uses: The National Marine Sanctuaries Act (16 U.S.C. 1431, *et seq.)* (NMSA) authorizes the use of research and monitoring within National Marine Sanctuaries (NMS). In 1981, the Grays Reef National Marine Sanctuary (GRNMS) was added to the system of NMSs.

The purpose of this information collection is to obtain socioeconomic information on this sanctuary. The GRNMS has recently revised its management plan, and two issues emerged as top priorities leading to efforts to change management strategies and regulations: (1) Prohibition of spear fishing and (2) research only area. Information was obtained to assess the potential socioeconomic impacts of the prohibition of spear fishing and research only area alternatives. The preferred alternatives have been chosen and the regulatory process to implement the regulations is underway. The study involves surveys of recreational user groups, which are potentially impacted by the regulations, to assess their knowledge, attitudes and perceptions of the management strategies and regulations and how they were actually impacted post implementation, and to guide education and outreach efforts.

Information will be collected on spatial use for all user groups to assess the extent of potential displacement of activity from the research only area alternative.

For business operations, costs and earnings will be obtained to assess the impact of regulatory alternatives on business profits. Socioeconomic/demographic information on owners/operators and number of employees and family members of owners/operators will also be obtained.

For members of households that participate in recreational fishing or recreational SCUBA diving, information will be collected on socioeconomic/demographic profiles, spending associated with their activity, economic user value associated with their activity, and knowledge, attitudes and perceptions about GRNMS management strategies and regulations.

Affected Public: Business or other for-profit organizations; individuals or households.

Frequency: One time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: OIRA_Submission@omb.eop.gov.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: September 29, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–24858 Filed 10–4–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Office of the Secretary

United States Patent and Trademark Office

National Telecommunications and Information Administration

[Docket No. 100910448–0448–01]

RIN 0660–XA19

Inquiry on Copyright Policy, Creativity, and Innovation in the Internet Economy

AGENCY: Office of the Secretary, U.S. Department of Commerce; Patent and Trademark Office, U.S. Department of Commerce; National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of Inquiry.

SUMMARY: The Department of Commerce's Internet Policy Task Force is conducting a comprehensive review of the relationship between the availability and protection of online copyrighted works and innovation in the Internet economy. The Department, the United States Patent and Trademark Office (USPTO), and the National Telecommunications and Information Administration (NTIA) seek public comment from all interested stakeholders, including rights holders, Internet service providers, and consumers on the challenges of protecting copyrighted works online and the relationship between copyright law and innovation in the Internet economy. After analyzing the comments submitted in response to this Notice, the Internet Policy Task Force intends to issue a report that will contribute to the Administration's domestic policy and international engagement in the area of online copyright protection and innovation.

DATES: Comments are due on or before November 19, 2010.

ADDRESSES: Interested parties are encouraged to file comments electronically by e-mail to *copyright-noi-2010@ntia.doc.gov.* Submissions should be in one of the following formats: HTML, ASCII, Word, rtf, or pdf. Paper comments can be sent to: Office of Policy Analysis and Development, NTIA, U.S. Department of Commerce, Room 4725, 1401 Constitution Avenue, NW., Washington, DC 20230. Please note that all material sent via the U.S. Postal Service (including "Overnight" or "Express Mail") is subject to delivery delays of up to two weeks due to mail

security procedures. Paper submissions should also include a CD or DVD in Word, WordPerfect, or pdf format. CDs or DVDs should be labeled with the name and organizational affiliation of the filer, and the name of the word processing program used to create the document. Comments filed in response to this notice will be made available to the public on the Internet Policy Task Force Web page at *http://www.ntia.doc.gov/internetpolicytaskforce.* For this reason, comments should not include confidential, proprietary, or business sensitive information.

FOR FURTHER INFORMATION CONTACT: For questions about this Notice, contact: Dennis Amari, Office of Policy Analysis and Development, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 4725, Washington DC 20230, telephone (202) 482–1880; or Michael Shapiro, Office of External Affairs, United States Patent and Trademark Office, U.S. Department of Commerce, Madison Building, 401 Dulany Street, Alexandria, VA 22314, telephone (571) 272–9300; or send an e-mail to *copyright-noi-2010@ntia.doc.gov.* Please direct media inquires to NTIA's Office of Public Affairs at (202) 482–7002; or USPTO's Office of Public Affairs at (572) 272–8400.

SUPPLEMENTARY INFORMATION:

Recognizing the vital importance of the Internet to U.S. prosperity, education, and political and cultural life, the Department has made it a top priority to ensure that the Internet remains open for innovation. The Department has assembled an Internet Policy Task Force whose mission is to identify leading public policy and operational challenges in the Internet environment. The Task Force leverages expertise across many bureaus at the Department, including those responsible for domestic and international information and communications technology policy, international trade, cybersecurity standards and best practices, intellectual property, business advocacy, and export control. This is one in a series of inquiries from the Task Force. The Task Force is conducting similar reviews of information privacy,[1] cybersecurity,[2] and the global free flow of information goods and services. The Task Force may explore additional areas in the future.

Background: Prior to releasing this Notice of Inquiry, the Task Force held listening sessions with a wide range of stakeholders to understand the current and most vexing questions related to online copyright protection as well as the broader impact of content issues on innovation in the Internet economy. The Task Force also convened a public meeting on July 1, 2010, to air these issues further.[3]

Over the course of this dialogue, the Task Force has identified a dual public policy imperative—to combat online copyright infringement more effectively and to sustain innovative uses of information and information technology. By way of this Notice and a follow-on report, the Task Force seeks to identify policies that will: (1) Increase benefits for rights holders of creative works accessible online but not for those who infringe on those rights; (2) maintain robust information flows that facilitate innovation and growth of the Internet economy; and (3) at the same time, safeguard end-user interests in freedom of expression, due process, and privacy.[4] The report will evaluate current challenges to protecting online copyrighted works and to sustaining robust information flows, and it will analyze various approaches to meet those challenges. The Task Force is hopeful that the dialogue launched here and the research conducted pursuant to this inquiry will contribute to Administration-wide policy positions and to a global consensus to foster creativity and innovation online. This review is being coordinated with the office of the Intellectual Property Enforcement Coordinator (IPEC) in the Office of Management and Budget, Executive Office of the President, and other components of the Executive Office of the President.

E-Commerce and Copyrighted Works: E-commerce and investment in information systems continue to create new jobs in the Internet economy and to contribute to the nation's economic recovery.[5] An important component of the growth in e-commerce is the rapid increase in the sale of digital content across the creative industries.[6] For example, sales of digital music downloads in the United States were estimated to reach $3.1 billion in 2009, a 19 percent increase above 2008 sales.[7] Likewise, revenues derived from the sale of online videos were estimated to reach $1.2 billion in 2008, and are expected to climb to $4.5 billion by 2012.[8] In 2009, revenues from the sale of e-books were estimated at $313 million, 177 percent above sales from the previous year and, for the first time ever, exceeding revenues from the sale of audio-books.[9] The popularity of online games is also on the rise, with a forecast to double 2009's $2.8 billion in online sales by 2015.[10] As these data suggest, the availability and consumption of a wide range of lawful online creative works are increasing rapidly and contribute an increasingly important component of our nation's e-commerce growth.

There are many reasons for the success that some innovators have had

[1] *See* Notice of Inquiry, Information Privacy and Innovation in the Internet Economy, 75 FR 21,226 (Apr. 23, 2010). This notice and all documents related to the Task Force initiative are available at *http://www.ntia.doc.gov/internetpolicytaskforce.gov.*

[2] *See* Notice of Inquiry, Cybersecurity, Innovation and the Internet Economy, 75 FR 44,216 (July 28, 2010).

[3] Notice of Public Meeting, Copyright Policy, Creativity, and Innovation in the Internet Economy, 75 FR 33,577 (June 14, 2010). An archival webcast of the public meeting can be found on the Internet Policy Task Force Web page at: *http://www.ntia.doc.gov/internetpolicytaskforce/copyright/webcast.html.*

[4] *See e.g.,* Remarks of Gary Locke, Secretary of Commerce, Copyright Policy in the Internet Economy Symposium, July 1, 2010, *available at http://www.commerce.gov/news/secretary-speeches/2010/07/01/remarks-copyright-policy-internet-economy-symposium; and,* Remarks of Lawrence E. Strickling. Assistant Secretary for Communications and Information, Copyright Policy in the Internet Economy Symposium, July 1, 2010, *available at http://www.ntia.doc.gov/presentations/2010/CopyrightSymposium_Remarks 07012010.html.*

[5] Remarks of Gary Locke, Secretary of Commerce, Privacy and Innovation Symposium, May 7, 2010, *http://www.commerce.gov/news/secretary-speeches/2010/05/07/remarks-privacy-and-innovation-symposium.*

[6] Organization for Economic Co-Operation and Development (OECD), OECD Information Technology Outlook 2008, at 250 (2008). The fair use of copyrighted works is also believed to contribute to the Internet economy. *See* Computer and Communications Industry Association (CCIA), Fair Use in the U.S. Economy: Economic Contribution of Industries Relying on Fair Use, at 4, 8 (2010), *http://www.ccianet.org/CCIA/files/ccLibrary Files/Filename/000000000354/fair-use-study-final.pdf.*

[7] Joshua P. Friedlander, Recording Indus. Association of America (RIAA), *2009 Year-End Shipment Statistics, available at http://76.74.24.142/A200B8A7–6BBF–EF15–3038–582014919F78.pdf.*

[8] Press Release, In-Stat, Explosive Growth Forecast in Online Video Market, Netflix Subscription Model Wins (Aug. 13, 2008), *http://www.instat.com/newmk.asp?ID=2373.*

[9] Press Release, Association of American Publishers, AAP Reports Book Sales Estimated at $23.9 Billion in 2009 (Apr. 7, 2010).

[10] Press Release, Pike & Fischer, U.S. Online Game Subscribers to More than Double in Five Years, Pike & Fischer Projects (Jan. 28, 2010), *http://www.marketwise.com/press-release/US–Online-Game-Subscribers-to-More-Than-Double-in-Five Years-Pike-Fischer-Projects-1109049.htm.*

in selling online digital content. For one, the open end-to-end architecture of the Internet enables innovation at the "edges" of the network, making possible the introduction of such content services, the development of new technologies and devices, and the opportunity to access distant markets. Thus, while traditional content formats and distribution channels have been disrupted, in part, by effects of the Internet on their markets and by the growing availability of content online, an increasing number of enterprises seem to be successfully adapting their business models or developing new ones, and leveraging the Internet's architecture for the distribution of creative works.

Second, the flow of content across the Internet is enabled by the carefully constructed balance of roles and responsibilities among stakeholders set forth in two key statutes. In 1996, Congress added Section 230 to the Communications Act of 1934. It grants Internet service providers, content hosting sites, and other so-called "Internet intermediaries" broad immunity from liability for all content created by third parties, as well as for actions taken in good faith to restrict access to or availability of objectionable online content posted by third-parties.[11] In the realm of copyright, Congress added Section 512 to the Copyright Act in 1997 via the Digital Millennium Copyright Act (DMCA). It fosters a balance of interests by enabling rights holders to enforce their rights against online infringers, while limiting the liability of Internet intermediaries for the infringing actions of their subscribers if they take certain steps aimed at combating infringement.[12] Both provisions of law are seen as having contributed significantly to expansion of the digital economy and both remain essential to promoting innovation and to protecting intellectual property online.

Despite the progress unleashed by the current policy framework, copyright infringement of works online remains a persistent and significant problem. Estimates of economic losses caused by online infringement to rights holders, the copyright industries, and the U.S. economy as a whole vary based on methodologies and assumptions used in such estimates, but are nonetheless substantial.[13] In a word, thieves of online copyrighted works "unfairly devalue America's contribution, hinder our ability to grow our economy, compromise good, high-wage jobs for Americans, and endanger strong and prosperous communities."[14]

The prevalence of online copyright infringement is the primary motivation for the Task Force to seek an updated understanding of stakeholders' experiences under the current policy framework and to learn more about voluntary, cooperative efforts to address online infringement. The broader goal is to gain greater insight into the opportunities and challenges for innovation in the creative content sector of the Internet economy.

The Nexus Between Online Copyright Policy and the Department's Role: The Department has played an instrumental role in the development of policies that have helped digital commerce flourish. Included among these policies is explicit recognition of the legitimate rights and commercial expectations of those whose creation and distribution of digital works strengthen our economy, expand our exports, and create jobs in America. Our ongoing challenge and commitment is to align the flexibility needed for innovation in the Internet economy with effective means of protecting copyrighted works that are accessible online.

USPTO serves as the advisor to the President on national and international intellectual property policy issues.[15] USPTO's attention to the protection of online copyrighted works began in 1993 when it chaired the Working Group on Intellectual Property Rights, one of the three working groups established by the White House Information Infrastructure Task Force. The Working Group examined and made recommendations to address copyright protection and other intellectual property rights in the context of digital interactive services.[16] Subsequently, USPTO participated in negotiations on the two World Intellectual Property Organization (WIPO) treaties known as the "WIPO Internet Treaties"—the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty—that established new standards for international protection of copyright and related rights in the digital age.[17] USPTO played a key role in the enactment of the DMCA in the United States which included a new Section 512 of the Copyright Act and provisions implementing the WIPO Internet Treaties in the United States.[18]

NTIA serves as the President's principal advisor on telecommunications and information policy matters and pursues the adoption of policies that facilitate and contribute to the full development of competition, efficiency, and the free flow of commerce in domestic and international telecommunications markets.[19] In this role, NTIA has been a lead contributor to the development of Internet policy in the Executive branch and played a key role in devising the first comprehensive Internet policy strategy, the *Framework for Global Electronic Commerce,* published by the White House Information Infrastructure Task Force in 1997. The Framework set forth five principles to guide government support for the evolution of Internet commerce and made a set of recommendations for international discussion to foster increased business and consumer confidence in the use of electronic networks for commerce.[20] Among its recommendations, the Framework acknowledged the imperative of protecting intellectual property rights in electronic commerce and identified adoption of the WIPO Internet Treaties as one of the Administration's top intellectual property policy objectives.[21]

Among the other Commerce Department bureaus engaged on intellectual property rights issues, the International Trade Administration (ITA) administers the Trade Agreements Program to monitor foreign country implementation of multilateral and bilateral trade agreements. This program also serves to identify access and other

[11] 47 U.S.C. 230 (2006).

[12] 17 U.S.C. 512 (2006).

[13] *See* OECD, The Economic Impact of Counterfeiting and Piracy 71 (2008); U.S. Government Accountability Office, GAO–10–423, Intellectual Property: Observations to Quantify the Economic Effects of Counterfeit and Pirated Goods 15, 24–25 (2010), *http://gao.gov/new.items/d10423.pdf. See also,* 2010 Joint Strategic Plan on Intellectual Property Enforcement, Intellectual Property Enforcement Coordinator (Joint Strategic Plan) at 5 (June 2010), *http://www.whitehouse.gov/omb/assets/intellectualproperty/intellectualproperty_strategic_plan.pdf* (noting that "[t]hese thieves impose substantial costs.").

[14] *Id.*

[15] American Inventors Protection Act of 1999, Public Law 106–113, app. I, § 4001, 113 Stat. 1501, 1501A–552 (1999) (amended 2002 and codified in scattered sections of title 35 of the U.S. Code).

[16] Information Infrastructure Task Force, *Intellectual Property and the National Information Infrastructure: The Report of the Working Group on Intellectual Property Rights* (1995), http://www.uspto.gov/web/offices/com/doc/ipnii.

[17] U.S. Government Accountability Office, GAO–04–912, Intellectual Property: U.S. Efforts have Contributed to Strengthened Laws Overseas, but Challenges Remain 17 (2004), *http://www.gao.gov/new.items/d04912.pdf.*

[18] Digital Millennium Copyright Act, Public Law 105–304, § 103, 112 Stat. 2860, 2863 (1998) (codified at 17 U.S.C. 1201–1205 (2006)).

[19] Telecommunications Authorization Act of 1992, Public Law 102–538, 106 Stat. 3533 (codified in scattered section of titles 47, 28, and 15 of the U.S. Code).

[20] *See* President William J. Clinton and Vice President Albert Gore Jr., *Framework for Global Electronic Commerce* (1997), *http://clinton4.nara.gov/WH/New/Commerce/*(pagination not available).

[21] *Id.*

barriers to trade, including those related to intellectual property rights. Within ITA's Market Access and Compliance unit, the Office of Intellectual Property Rights investigates allegations of trade agreement violations and encourages policies by foreign governments to enhance and protect intellectual property rights for U.S. firms and artists. This office also develops trade programs and tools with other Federal agencies to help U.S. businesses and citizens enforce and protect their intellectual property rights in foreign markets.

Across the Federal government, the Department works closely with the Office of the U.S. Trade Representative (USTR) and other agencies to establish, on a bilateral and multilateral basis, workable treaty commitments and trade agreements that address intellectual property rights. For example, the Department collaborates with USTR in negotiations to establish the Anti-Counterfeiting Trade Agreement (ACTA), in the "Special 301" annual reviews of intellectual property protection and market access practices in foreign countries, and in negotiation and implementation of the intellectual property chapters of free trade agreements—all of which address online copyright issues in foreign jurisdictions. The Department also works with the Department of Justice to develop proportionate, deterrent penalties for commercial scale counterfeiting and piracy around the world. Additionally, the Department works with the National Intellectual Property Rights Coordination Center, led by U.S. Immigration and Customs Enforcement, to leverage resources, skills and authorities to provide a comprehensive U.S. Government enforcement response to intellectual property rights infringement. Through these and other work streams, the Department is committed to effective systems that protect intellectual property rights at home and abroad.

Request for Comment

The questions below are intended to assist in identifying issues relevant to the Department's Task Force and should not be construed as a limitation on the scope of comments parties may submit. Intellectual property law and policy affects almost every aspect of Internet content and technology. And, because the digital economy is intrinsically international in scope, most policy questions need to be understood within both a domestic and an international context. Therefore, in addressing these questions, commenters should identify what they consider lessons learned from other jurisdictions.

Comments that contain references, studies, research, and other empirical data that are not widely published should include copies of the referenced material with the submitted comments. Comments filed in response to this notice will be made available to the public on the Internet Policy Task Force Web page at *http://www.ntia.doc.gov/internetpolicytaskforce*. For this reason, comments should not include confidential, proprietary, or business sensitive information.

1. Rights Holders: Protection and Detection Strategies for Online Infringement

During the listening sessions, the Task Force heard that online copyright infringement is depriving U.S. copyright owners of their rights and compensation, and causing substantial economic harm to the copyright industries, their employees, independent authors and artists, and the U.S. economy as a whole. The Task Force also heard that the use of peer-to-peer (P2P) file-sharing technology to engage in unauthorized distribution of copyrighted works is still a significant problem, but that other technologies, such as cyber lockers and streaming, are becoming increasingly prevalent as means for illegal online copying and distribution.[22] Stakeholders indicated that in some cases, unauthorized distribution of copyrighted works over the Internet originates in other countries and that Web sites facilitating online infringement have become more sophisticated in order to mislead consumers into believing they are legitimate.

To address the problem of online piracy, stakeholders rely on a number of technologies to detect infringing content on the Internet.[23] Stakeholders have also developed an array of online content services using various business models to offer consumers legitimate access to music, films and television programming, games, books, and other creative works. Partnerships among copyright owners and online service providers to distribute content are increasingly common. Still, rights holders continue to face challenges in detecting online infringement, in curbing infringement, and in attracting users to legitimate sources of copyrighted content.

What are stakeholders' experiences and what data collection has occurred related to trends in the technologies used to engage in online copyright piracy, and what is the prevalence of such piracy? What new studies have been conducted or are in-process to estimate the economic effects of this piracy? What assumptions are made in such studies on the substitution rates among the different forms of content? What technologies are currently used to detect or prevent online infringement and how effective are these technologies? What observations, if any, have been made as to patterns of online infringement as broadband Internet access has become more available? Is litigation an effective option for preventing Internet piracy? Consistent with free speech, due process, antitrust, and privacy concerns, what incentives could encourage use of detection technologies by online services providers, as well as assistance from payment service providers, to curb online copyright infringement?

What challenges have the creative industries experienced in developing new business models to offer content online and, in the process, to counteract infringing Internet downloads and streaming? Can commenters make any generalizations about the online business models that are most likely to succeed in the 21st century, as well as the technological and policy decisions that might help creators earn a return for their efforts? (Again, keeping in mind free speech, due process and privacy concerns.) How can government policy or intellectual property laws promote successful, legitimate business models and discourage infringement-driven models? And, how can these policies advance these goals while respecting the myriad legitimate ways to exchange non-copyrighted information (or the fair use of copyrighted works) on the Internet?

2. Internet Intermediaries: Safe Harbors and Responsibilities

As described earlier, Section 230 of the Communications Act and Section 512 of the Copyright Act limit the liability of Internet intermediaries for content made available on their services. Section 512 provides online service providers of transitory

[22] *See* Cisco, *Visual Networking Index: Forecast and Methodology*, 2009–2014, at 1–2 (2010), *http://www.cisco.com/en/US/solutions/collatetal/ns341/ns525/nr537/ns705/ns827/white_paper_c11–481360.pdf* (forecasting a higher amount of Internet video traffic than P2P traffic by the end of 2010, the first time that P2P will not be the largest type of Internet traffic since 2000; but also forecasting continued growth in the overall volume of P2P traffic).

[23] Technologies known to be in use for purposes of identifying online copyright infringement include watermarks, fingerprinting, and content filtering. *See* In the Matter of a National Broadband Plan for Our Future, Comments of the Motion Picture Association of America, Inc., in Response to the FCC Workshop on the Role of Content in the Broadband Ecosystem, GN Docket No. 09–51, at 21 (Oct. 2009).

communications, caching, storage, and data location services a qualified safe harbor in cases of online infringement. The safe harbor is predicated on a "notice and takedown" regime in which the provider must act expeditiously to remove or disable access to allegedly infringing content upon notice by the copyright owner. Stakeholders in listening sessions also described collaborative efforts to reduce online infringement. For example, a large number of stakeholders are collaborating to develop a common digital standard to facilitate the authorized and efficient distribution of content to any device.[24] In addition, the Task Force heard from stakeholders about a collaborative effort to establish comprehensive guidelines for user-generated content designed to protect copyrighted works and to bring more content to consumers through legitimate channels.[25] Cooperative efforts by the private sector such as these are explicitly encouraged in the Joint Strategic Plan (Plan) on Intellectual Property Enforcement, released by the office of the U.S. Intellectual Property Enforcement Coordinator in June 2010.[26]

What are stakeholders' experiences with the volume and accuracy of takedown notices issued for allegedly infringing content across the different types of online services (*i.e.,* storage, caching, and search) and technologies (*e.g.,* P2P, cyber lockers, streaming, *etc.*)? What processes are employed by rights holders to identify infringers for purposes of sending takedown notices? What processes do Internet intermediaries employ in response to takedown notices? Are Internet intermediaries' responses to takedown notices sufficiently timely to limit the damage caused by infringement? What are the challenges of managing this system of notices? What are stakeholders' experiences with online copyright infringement by users who change URLs, ISPs, locations, and/or equipment to avoid detection? What challenges exist to the identification of such systematic infringers? What are stakeholders' experiences with Section 512(i) on the establishment of policies by online service providers to inform subscribers of service termination for repeat infringement? What are stakeholders' experiences with the framework in Section 512(j) for injunctive relief to prevent or restrain online infringement? Would stakeholders recommend improvements to existing legal remedies or even new and additional legal remedies to deal with infringing content on a more timely basis?

What are stakeholders' experiences with developing collaborative approaches to address online copyright infringement? What range of stakeholders participated in the development of such collaborative approaches? Have collaborative approaches resulted in the formulation of best practices, the adoption of private graduated response systems, or other measures to deter online infringement that can be replicated? What other collaborative approaches should stakeholders consider? How can government best encourage collaborative approaches within the private sector?

The Internet was developed by, and continues to evolve through, collaborative multi-stakeholder efforts. These efforts often have proven successful at addressing difficult challenges flowing from the growth of Internet communications and digital commerce. In confronting the challenges of online content and copyright infringement, to what extent have all relevant stakeholder groups, such as independent creators and Internet users, participated in or had a window on collaborative approaches to curb online infringement? Recognizing the inherent challenges in engaging a wide variety of stakeholders—large and small, non-commercial, multinational (among others)—in such collaborative approaches, what strategies, if any, have been used to collect third-party input and feedback or communicate the outcomes to users and other non-participating stakeholders? For those engaged in collaborative efforts to protect copyrighted works, what are the practical challenges, if any, in promoting transparency, inclusiveness, clarity in expected behavior, and fair process for end users? Are there examples of voluntary arrangements that effectively meet these challenges?

3. Internet Users: Consumers of Online Works and User-Generated Content

The 1997 *Framework for Global Electronic Commerce* was prescient in describing the future of e-commerce in stating, "Consumers will be able to shop in their homes for a wide variety of products [and] view these products on their computers or televisions, access information about the products * * * and order and pay for their choice, all from their living rooms."[27] Indeed, as consumers and providers adapt to change, the ease and efficiency of downloading and streaming digital content over the Internet will increasingly favor this medium over more traditional methods of acquiring or delivering creative works. With increasing frequency, consumers are also turning to online services to generate and post content of their own creation ("user-generated content") and to access such creative works, a phenomenon that has exploded in recent years. To provide a measure of balance on behalf of Internet users who access and/or create online content, Section 512 includes a counter-notification mechanism that enables Internet users to respond to takedown notices that allege online copyright infringement.[28]

What initiatives have been undertaken to improve the general awareness of Internet users about online copyright infringement and the availability of legitimate sources to access online copyrighted works? What are stakeholders' experiences with the awareness and appropriate use by Internet users of the counter-notification mechanism? What are stakeholders' experiences regarding inappropriate use by Internet users of the counter-notification mechanism, if any? What are stakeholders' experiences with the volume of counter-notices filed? Do current methods of detecting infringement affect consumers' ability to legally obtain copies of copyrighted works and/or share legal user-generated content? What are the experiences of universities in raising general awareness with their communities about the harms of digital piracy? What are stakeholders' experiences in foreign countries and on

[24] The "Digital Entertainment Content Ecosystem" (DECE) is a consortium of entertainment, software, hardware, retail, infrastructure and delivery companies. DECE has developed a common file format with copy protection and remote file storage to be used by participating content providers, services, and devices enabling consumers to download legal content. DECE announced that "UltraViolet" will be the brand name for associated offerings. Press Release, Digital Entertainment Content Ecosystem, Digital Entertainment Content Ecosystem Unveils UltraViolet Brand (July 20, 2010), *http://www.uvvu.com/press/UltraViolet_Brand_Launch_Release_07_20_2010_FINAL.PDF*.

[25] Principles for User Generated Content Services, *http://www.ugcprinciples.com* (last visited May 27, 2010).

[26] The Plan calls upon content owners, Internet service providers, advertising brokers, payment processors and search engines to "work collaboratively, consistent with antitrust laws, to address activity that has a negative economic impact and undermines U.S. businesses, and to seek practical and efficient solutions to address infringement." Joint Strategic Plan, *supra* note 13, at 17.

[27] Framework for Global Electronic Commerce, *supra* note 20.

[28] Through the issuance of a counter-notice to the online service provider, an Internet user can assert a good faith belief that the removal or disabling of content by an online service provider upon receipt of a takedown notice was done by mistake or misrepresentation. 17 U.S.C. 512 (g)(3)(C).

university campuses in reducing online copyright infringement?

In turn, are independent creators and Internet users able to fully exploit the Internet platform for the distribution of their works and, if not, what barriers have been encountered? What mechanisms are there, or should there be, for creators of user-generated content to seek compensation for their work?

Dated: September 29, 2010.

Gary Locke,

Secretary of Commerce.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

Lawrence E. Strickling,

Assistant Secretary of Commerce for Communications and Information.

[FR Doc. 2010–24863 Filed 10–4–10; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Monterey Bay National Marine Sanctuary Advisory Council

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The ONMS is seeking applications for the following vacant seats on the Monterey Bay National Marine Sanctuary Advisory Council: At-Large (1), Education, Diving, and Tourism. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the sanctuary. Applicants who are chosen should expect to serve until February 2014.

DATES: Applications are due by November 12, 2010.

ADDRESSES: Application kits may be obtained from 299 Foam Street, Monterey, CA, 93940 or online at *http://montereybay.noaa.gov/.* Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Nicole Capps, 299 Foam Street, Monterey, CA, 93940, (831) 647–4206, *nicole.capps@noaa.gov.*

SUPPLEMENTARY INFORMATION: The MBNMS Advisory Council was established in March 1994 to assure continued public participation in the management of the Sanctuary. Since its establishment, the Advisory Council has played a vital role in decisions affecting the Sanctuary along the central California coast.

The Advisory Council's twenty voting members represent a variety of local user groups, as well as the general public, plus seven local, state and federal governmental jurisdictions. In addition, the respective managers or superintendents for the four California National Marine Sanctuaries (Channel Islands National Marine Sanctuary, Cordell Bank National Marine Sanctuary, Gulf of the Farallones National Marine Sanctuary and the Monterey Bay National Marine Sanctuary) and the Elkhorn Slough National Estuarine Research Reserve sit as non-voting members.

Four working groups support the Advisory Council: The Research Activity Panel ("RAP") chaired by the Research Representative, the Sanctuary Education Panel ("SEP") chaired by the Education Representative, the Conservation Working Group ("CWG") chaired by the Conservation Representative, and the Business and Tourism Activity Panel ("BTAP") chaired by the Business/Industry Representative, each dealing with matters concerning research, education, conservation and human use. The working groups are composed of experts from the appropriate fields of interest and meet monthly, or bi-monthly, serving as invaluable advisors to the Advisory Council and the Sanctuary Superintendent.

The Advisory Council represents the coordination link between the Sanctuary and the state and federal management agencies, user groups, researchers, educators, policy makers, and other various groups that help to focus efforts and attention on the central California coastal and marine ecosystems.

The Advisory Council functions in an advisory capacity to the Sanctuary Superintendent and is instrumental in helping develop policies, program goals, and identify education, outreach, research, long-term monitoring, resource protection, and revenue enhancement priorities. The Advisory Council works in concert with the Sanctuary Superintendent by keeping him or her informed about issues of concern throughout the Sanctuary, offering recommendations on specific issues, and aiding the Superintendent in achieving the goals of the Sanctuary program within the context of California's marine programs and policies.

Authority: 16 U.S.C. 1431, *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: September 24, 2010.

Daniel J. Basta,

Director, Office National Marine Sanctuaries National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2010–24916 Filed 10–4–10; 8:45 am]

BILLING CODE M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XZ37

Endangered Species; File No. 15596

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that the North Carolina Aquarium at Fort Fisher, North Carolina Department of Environment and Natural Resources, Atlantic Beach, NC, 28512 [Hap Fatzinger, Responsible Party], has applied in due form for a permit to hold shortnose sturgeon (*Acipenser brevirostrum*) for the purposes of enhancement.

DATES: Written, telefaxed, or e-mail comments must be received on or before November 4, 2010.

ADDRESSES: The application and related documents are available for review by selecting "Records Open for Public Comment" from the Features box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov*, and then selecting File No. 15596 from the list of available applications.

These documents are also available upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376 and;

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, Florida 33701; phone (727)824–5312; fax (727)824–5309.

Written comments on this application should be submitted to the Chief, Permits, Conservation and Education Division, at the address listed above. Comments may also be submitted by

facsimile to (301)713–0376, or by email to *NMFS.Pr1Comments@noaa.gov*. Please include the File No. 15596 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits, Conservation and Education Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Colette Cairns or Jennifer Skidmore, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq*.) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The North Carolina Aquarium at Fort Fisher is requesting a permit to continue enhancement activities previously authorized under Permit No. 1273. Activities would include the continued maintenance and educational display of five captive-bred, non-releaseable adult shortnose sturgeon. This display would be used to increase public awareness of the shortnose sturgeon and its status by educating the public on shortnose sturgeon life history and the reasons for the species decline. The proposed project to display endangered cultured shortnose sturgeon responds directly to a recommendation from the NMFS recovery plan outline for this species. The permit would not authorize any takes from the wild, nor would it authorize any release of captive sturgeon into the wild. The permit is requested for a duration of 5 years.

Dated: September 29, 2010.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–24988 Filed 10–4–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–922]

Raw Flexible Magnets from the People's Republic of China: Rescission of New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 5, 2010.

SUMMARY: In response to a request from Jingzhou Meihou Flexible Magnet Company, Ltd. ("Jingzhou Meihou") the Department of Commerce (the "Department") published on April 30, 2010, a **Federal Register** notice announcing the initiation of a new shipper review of the antidumping duty order on raw flexible magnets from the People's Republic of China ("PRC") covering the period of September 1, 2009, through February 28, 2010. On August 27, 2010, Jingzhou Meihou withdrew its request for a new shipper review. Therefore, we are rescinding this new shipper review.

FOR FURTHER INFORMATION CONTACT: Maisha Cryor, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5831.

SUPPLEMENTARY INFORMATION:

Background

On March 29, 2010, we received a timely request for a new shipper review from Jingzhou Meihou in accordance with 19 CFR 351.214(c) and 351.214(d)(2). On April 30, 2010, the Department found that the request for review with respect to Jingzhou Meihou met all of the regulatory requirements set forth in 19 CFR 351.214(b) and initiated an antidumping duty new shipper review. *See Raw Flexible Magnets From the People's Republic of China: Initiation of Antidumping Duty New Shipper Review*, 75 FR 22740 (April 30, 2010).

On August 27, 2010, Jingzhou Meihou withdrew its request for a new shipper review. On September 2, 2010, we placed on the record and served to parties a memorandum stating that the Department intended to rescind the above–referenced new shipper review, allowing parties to comment on the intended rescission by no later than September 9, 2010. *See* Memorandum to the File from Maisha Cryor, Case Analyst, through Robert Bolling, Program Manager, regarding: Withdrawal of Request for NSR from Jingzhou Meihou, dated September 2, 2010. The Department did not receive comments from any party. *See* Memorandum to the File from Maisha Cryor, Case Analyst, through Robert Bolling, Program Manager, regarding: Comments on Jingzhou Meihou's Withdrawal of Request for NSR, dated September 15, 2010.

Rescission of New Shipper Review

19 CFR 351.214(f)(1) provides that the Department may rescind a new shipper review if the party that requested the review withdraws its request for review within 60 days of the date of publication of the notice of initiation of the requested review. Although Jingzhou Meihou withdrew its request after the 60-day deadline, we find it reasonable to extend the deadline. *See* 19 CFR 351.302(b). In this instance, no other company would be affected by a rescission, and we have received no objections from any party to Jingzhou Meihou's withdrawal of its request for this new shipper review. Based upon the above, we are rescinding the new shipper review of the antidumping duty order on raw flexible magnets from the PRC with respect to Jingzhou Meihou. *See Certain Steel Nails From the People's Republic of China: Rescission of New Shipper Review*, 75 FR 38080 (July 1, 2010) (rescinding the new shipper review after the 60-day deadline). As the Department is rescinding this new shipper review, we are not making a determination as to whether Jingzhou Meihou qualifies for a separate rate. Therefore, Jingzhou Meihou will remain part of the PRC entity.

Notifications

We intend to instruct U.S. Customs and Border Protection, 15 days from the date of publication of this notice, to liquidate any entries by Jingzhou Meihou during the period of review at the cash deposit rate in effect at the time of entry.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destructions of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with section 777(i) of the Act and 19 CFR 351.214(f)(3).

Dated: September 28, 2010.

Susan H. Kuhbach,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–24996 Filed 10–4–10; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XW81

Takes of Marine Mammals Incidental to Specified Activities; Installation of Meteorological Data Collection Facilities in the Mid-Atlantic Outer Continental Shelf

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

ACTION: Notice; issuance of incidental harassment authorization.

SUMMARY: In accordance with regulations implementing section the Marine Mammal Protection Act (MMPA), as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to pile driving associated with installation of two meteorological data collection facilities (MDCFs); one each off the coast of Delaware and New Jersey, has been issued to Bluewater Wind, LLC (Bluewater).

DATES: This authorization is effective from October 1- November 15, 2010.

ADDRESSES: A copy of the application, IHA, and a list of references used in this document may be obtained by writing to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. A copy of the application may be obtained by writing to this address or by telephoning the contact listed here and is also available at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*.

FOR FURTHER INFORMATION CONTACT: Jaclyn Daly, Office of Protected Resources, NMFS, (301) 713–2289, ext 151.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

On May 5, 2010, NMFS received two applications from Bluewater for the taking, by Level B harassment, of marine mammals incidental to pile driving associated with installation of a MDCF in Federal waters approximately 16.5 miles off the coast of Delaware and one approximately 20 miles off the coast of New Jersey during October 2010. Bluewater provided supplemental information to NMFS on June 8, 2010, completing the applications. In summary, to build each MDCF, Bluewater must drive, via an impact hammer, a single 3–meter pile into the seabed which will act as the foundation to elevate and support the data collection device. Pile driving has the potential to result in the take, by Level B harassment, of eight species marine mammals within the action area as it elevates underwater noise levels. Since pile driving has the potential to take marine mammals, a marine mammal take authorization under the MMPA is required.

Description of the Specified Activity

In November 2009, the Bureau of Ocean Energy Management (BOEM), formerly the Mineral Management Service, issued a lease to Bluewater for construction and operation of MDCFs designed to support future development of, among other companies, Bluewater's planned Delaware and New Jersey Offshore Wind Parks. The purpose of installing the MDCFs is to determine the feasibility of a commercial-scale offshore wind energy park at the proposed project site. Bluewater will collect and analyze at least one full year of meteorological data inclusive of wind speed and direction at multiple heights, information on other seasonal meteorological conditions (e.g., turbulence, temperature, pressure, and atmospheric stability), the marine environment (e.g., ocean currents, tides, and waves), and avian and bat activity (e.g., activity within the potential rotor swept area, flight altitude). The IHA authorizes the take, by Level B harassment only, of marine mammals incidental to pile driving the monopole foundation required to support the wind data collection devices, not future installation of wind turbines.

Bluewater will install a single 3–meter diameter pile foundation to elevate and stabilize a data collection device at two locations; one located in the Outer Continental Shelf (OCS) Official Protraction Diagram (OPD) lease block Salisbury, NJ 18–05 Lease Block 6325 (approximately16 miles off Delaware) and one at OCS OPD lease block Wilmington, NJ 18–02 Block 6936 (approximately 20 miles off NJ). The mean lower low water depth (MLLW) at the Delaware and New Jersey site is approximately 69 feet (21 m) and 82 feet (25 m), respectively. Pile driving is scheduled to occur in October 2010; however, given unforeseen construction or weather related delays, NMFS has made the IHA effective until November 15, 2010.

To install the monopole foundation, Bluewater will use an IHC-S 900 Hydraulic Impact Hammer (or equal)

with a maximum rated impact force of 900 kilojoules (KJ). Bluewater anticipates it will take approximately 8 to 12 hours to mobilize and demobilize the construction vessels on site; however, only 3–8 of these hours will be spent pile driving. The two MDCFs will not be installed simultaneously; the Delaware MDCF will be installed first followed by the New Jersey MDCF approximately 1–2 weeks later. Because of physical parameters associated with this project (e.g., pile size, water depth), Bluewater has indicated a vibratory hammer cannot be used. Pile driving activities will be restricted to daylight hours between one-half hour after sunrise and one-half hour prior to sunset. A complete description of installation techniques and associated noise levels can be found in the proposed IHA notice for this action (75 FR 42698; July 22, 2010).

Comments and Responses

A notice of receipt and request for public comment on the **Federal Register** notice of proposed authorization was published on July 22, 2010 (75 FR 42698). NMFS also made BOEM's EA available for comment during this time. During the 30–day public comment period, NMFS received comments from the Marine Mammal Commission (Commission) on the proposed IHA. No comments were received by any other members of the public and none were received on BOEM's EA.

Comment 1: The Commission recommended that, prior to issuance of the IHA, NMFS require that observations be made during all soft-starts of pile driving activities to gather data needed to analyze and report on its effectiveness as a mitigation measure.

Response: As described in the proposed IHA **Federal Register** notice, protected species observers (PSOs) will be stationed at the pile driving location and on two vessels before, during, and after all pile driving. This includes the time before and during soft starts of the pile hammer. Bluewater is not authorized to begin pile driving should any marine mammal be located within the Level A harassment zone or if any marine mammal listed as endangered or threatened under the Endangered Species Act (ESA) is located within approximately 7 km of the hammer. Therefore, data on reactions of marine mammals to soft starts very close to the hammer or any ESA marine mammal is not possible. However, if species authorized to be taken are within the Level B harassment zone during a soft start, data on behavioral reactions of those animals will be recorded and reported to NMFS, as described in the proposed IHA notice.

Description of Marine Mammals in the Area of the Specified Activity

Several species of marine mammals are known to traverse or occasionally inhabit the waters within the action area of project construction activities, including some species listed as threatened or endangered under the ESA. Thirty-four marine mammal species including 29 cetaceans, four pinnipeds, and one sirenian species have confirmed occurrences in the mid-Atlantic OCS. A list of these species may be found in the proposed IHA notice for this action.

Some marine mammals species are likely to occur within the action area more so than others; however, marine mammal occurrence within the action areas during the 3–8 hours of pile driving per site is expected to be minimal. Marine mammal aerial and vessel based surveys were conducted from January through December 2008 to better assess species present within the action area. In addition, multiple geophysical and geotechnical (G&G) surveys were conducted by three wind park developers off the coast of New Jersey, all of which had dedicated protected species observers onboard the survey vessel. Reports from all surveys were prepared and provided to NMFS to determine species abundance within the action area (Geo-Marine, 2008; RPS GeoCet, 2009; AIS, 2009; Geo-Marine, 2009). In general, sightings of marine mammals included large whale and delphinid species; however, sightings were uncommon. The proposed IHA notice for this action further describes these survey results.

Although ESA-listed whales may be present in OCS waters during the scheduled pile driving timeframe, Bluewater will implement mitigation measures such that no ESA-listed marine mammal, including North Atlantic right whales, will be exposed to sound levels at or above NMFS behavioral harassment threshold for impulsive noise (i.e., 160 dB re: 1 microPa). Therefore, NMFS has issued authorization to harass eight species of marine mammals incidental to MDCF installation off Delaware and New Jersey. These include bottlenose dolphins, spotted dolphins, common dolphins, Atlantic white-sided dolphins, Risso's dolphins, pilot whales, harbor porpoise, and harbor seals; none of these species are listed under the ESA. The western north Atlantic coastal stock of bottlenose dolphins is the only species listed as depleted under the MMPA. The action area does not provide significant reproductive, migratory and feeding habitat for any marine mammal. Animals will likely be transiting through the area or opportunistically resting or foraging. A detailed description on species status, abundance, and ecology of the eight species of cetaceans and pinnipeds that may be taken from the specified activity are provided in the IHA application and proposed IHA notice for this action.

Effects on Marine Mammals

NMFS has determined that open-water impact pile driving of the single monopole at each site, as outlined in the project description, has the potential to result in short term-behavioral harassment of marine mammals if they are present near the action area. Impacts would not exceed the duration of time animals are exposed to pile driving sound. At maximum, this would be 3–8 hours. However, the action area is located in habitat animals use for traveling; therefore, it is not expected that an animal would remain in the area for an extended duration of time. In addition, pile driving at the sites will not occur concurrently; therefore, no cumulative impacts from multiple pile driving activities would occur. Bluewater will implement mitigation and monitoring measures designed to eliminate potential for Level A (injurious) harassment of all marine mammals and also Level A or B harassment of ESA-listed marine mammals (see *Proposed Mitigation* section).

NMFS is in the process of developing guidelines for determining sound pressure level (SPL) thresholds for acoustic harassment based on the best available science. In the interim, NMFS generally considers 180 and 190 dB root mean square (rms) as the level at which cetaceans and pinnipeds, respectively, could be subjected to Level A (injurious) harassment. Level B (behavioral) harassment has the potential to occur if marine mammals are exposed to pulsed sounds (e.g. impact pile driving) at or above 160 dB rms, but below injurious thresholds. These thresholds are considered conservative.

Bluewater analyzed pile driving data collected during offshore wind farm construction in European waters to estimate the distances to NMFS' threshold levels during pile driving off Delaware and New Jersey (see sections 2.2 and 2.3 in Bluewater's IHA application). Table 1 below summarizes the estimated distances to NMFS' Level A and B harassment isopleths at each location based on Bluewater's modeling. Water depth is the main contributing

factor to any discrepancy between the two proposed sites.

TABLE 1. ESTIMATED DISTANCES TO NMFS' HARASSMENT THRESHOLDS FOR IMPACT PILE DRIVING OFF DELAWARE AND NEW JERSEY.

Site Location	190 dB re: 1 microPa (rms)[1]	180 dB re: 1 microPa (rms)[2]	160 dB re: 1 microPa (rms)[3]
OCS-Delaware	330 m	760 m	7,230 m
OCS-New Jersey	375 m	1,000 m	>6,600 m

[1] Level A harassment threshold for pinnipeds in water.
[2] Level A harassment threshold for cetaceans.
[3] Level B harassment thresholds for pinnipeds and cetaceans from impulsive noise.

Hearing Impairment

Temporary or permanent hearing impairment is possible when marine mammals are exposed to very loud sounds. Hearing impairment is measured in two forms: temporary threshold shift (TTS) and permanent threshold shift (PTS). There are no empirical data for onset of PTS in any marine mammal; therefore, PTS- onset must be estimated from TTS-onset measurements and from the rate of TTS growth with increasing exposure levels above the level eliciting TTS-onset. PTS is presumed to be likely if the hearing threshold is reduced by ≥40 dB (i.e., 40 dB of TTS). Due to mitigation measures identified in Bluewater's application and the IHA, NMFS does not expect that marine mammals will be exposed to levels that could elicit PTS; therefore, it will not be discussed further.

Temporary Threshold Shift (TTS)

TTS is the mildest form of hearing impairment that can occur during exposure to a loud sound (Kryter, 1985). Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals. Because it is non-injurious, NMFS considers TTS as Level B harassment that is mediated by physiological effects on the auditory system; however, NMFS does not consider onset TTS to be the lowest level at which Level B harassment may occur.

Of all marine mammals which could be encountered during the very short pile driving period (3–8 hours), bottlenose and spotted dolphins are the species most likely to come within the action area as they are the most abundant. Bottlenose dolphins have been the subject for most TTS studies and can be considered a surrogate for other delphinids (e.g., spotted dolphins, common dolphins) that may be exposed to Bluewater's pile driving activity. For bottlenose dolphins, eight different captive individuals have been exposed to impulsive anthropogenic sound, with TTS being induced in five individuals (Schlundt *et al.*, 2000; Nachtigall *et al.*, 2004; Finneran *et al.*, 2007; Mooney *et al.*, 2009). TTS onset occurred when animals were exposed to sound levels ranging from 182 to 203 dB re: 1μPa^2–s (SEL), with a median TTS onset level of 192.5 dB SEL. For pinnipeds, underwater TTS experiments involving exposure to pulse noise is limited to a single study. Finneran *et al.* (2003) found no measurable TTS when two California sea lions were exposed to sounds up to 183 dB re: 1 microPa (peak-to-peak). No TTS studies have been conducted on mysticetes; therefore, no data exist. However, if the pattern holds true as that for mid frequency cetaceans and pinnipeds, one can assume that TTS occurs in mysticetes at levels much higher than NMFS' Level B behavioral harassment threshold for impulsive noise (i.e., 160 dB rms) and likely above NMFS' Level A (injurious) harassment thresholds.

Although Bluewater's pile driving will be both loud and continuous for 3–8 hours, NMFS anticipates that if TTS does occur, it will be short in duration as (1) pile driving will cease if animals come within the 190 or 180 dB isopleth for pinnipeds and cetaceans, respectively, and (2) marine mammals will likely not linger in areas with sound pressure levels high enough to induce long-term TTS.

Behavioral Impacts

NMFS has discussed behavioral impacts resulting from impact pile driving for various other projects which are relevant here (e.g., 73 FR 38180; 74 FR 18492; 74 FR 63724). Additionally, in 2009, the BOEM prepared an EA and associated Finding of No Significant Impact (FONSI) on the *Issuance of Leases for Wind Resource Data Collection on the Outer Continental Shelf Offshore Delaware and New Jersey* which analyzes the impacts of constructing, operating, and decommissioning MDCFs similar to ones proposed by Bluewater in their MMPA application. In summary, BOEM found that noise from pile driving could disturb normal marine mammal behaviors (e.g., feeding, social interactions), mask calls from conspecifics, disrupt echolocation capabilities, and mask sounds generated by predators. Behavioral effects may be incurred at ranges of many miles, and hearing impairment may occur at close range (Madsen *et al.*, 2006). Behavioral reactions may include avoidance of, or flight from, the sound source and its immediate surroundings, disruption of feeding behavior, interruption of vocal activity, and modification of vocal patterns (Watkins and Scheville, 1975; Malme *et al.*, 1984; Bowles *et al.*, 1994; Mate *et al.*, 1994). These impacts are similar to those previous identified by NMFS during analysis of pile driving projects, including the specified activity. NMFS characterizes the potential effects described here as indicative of Level B (behavioral) harassment.

In addition to noise related impacts to marine mammals, NMFS, and BOEM in its EA, has considered the impacts from vessel traffic (i.e., ship strikes) and potential operational discharges from MDCF construction and operation. The marine mammals most vulnerable to vessel strikes are slow-moving and/or spend extended periods of time at the surface in order to restore oxygen levels within their tissues after deep dives (e.g., right whales, fin whales, sperm whales). Smaller marine mammals such as delphinids, are agile and move more quickly through the water, making them less susceptible to ship strikes. Vessels used for construction include crew boats and slow moving support vessels such as tugs and barges. To prevent ship strikes, crew aboard all vessels associated with the specified activity transiting to and from the construction site will actively watch for whales and other marine mammals and vessel operators will abide by NMFS' Northeast Marine Mammal Viewing Guidelines. As a result, NMFS does not anticipate a ship strike is likely to occur.

BOEM's EA also analyzed impacts from operational waste generated from vessels includes bilge and ballast waters, trash and debris, and sanitary and domestic wastes. These are described in the EA and in NMFS' proposed IHA notice related to this action. In summary, NMFS agrees with BOEM's analysis that the impacts to marine mammals from the discharge of waste materials or the accidental release of fuels are expected to be negligible.

Effects on Habitat

The footprint of the foundation and scour protection (if used) is approximately 0.06 acre (30–foot radius around the monopole foundation) at the MDCF site. Under the terms of the BOEM lease, within a period of one year after cancellation, expiration, relinquishment, or other termination of the lease, the lessee shall remove all devices, works and structures from the leased area and restore the leased area to its original condition before issuance of the lease (BOEM 2008). Bluewater's consultation with the NMFS under Section 7 of the ESA for the BOEM lease, completed May 14, 2009, concluded that all effects of the proposed project, including those to habitat, will be insignificant or discountable. Under the MMPA, the same determination on effects to marine mammal habitat applies based on the factors in the earlier consultation.

Mitigation

In order to issue an incidental take authorization (ITA) under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses.

Bluewater will implement the following mitigation measures designed to eliminate the potential for serious injury/mortality and Level A (injurious) harassment and minimize Level B (behavioral) harassment to marine mammals:

Establishment of Exclusion Zone

Bluewater will establish and monitor a preliminary 1,000 m Level A harassment exclusion zone (EZ) around the pile driving site in order to eliminate the potential for injury (Level A harassment) of marine mammals. This zone is designed to include all areas where the underwater SPLs are anticipated to equal or exceed 180 dB rms. If the acoustic survey (see Acoustic Monitoring section) determines that the area ensonified by sounds exceeding 180 dB extends beyond the preliminary 1,000–meter EZ, a new safety exclusion zone will be established. Otherwise, the 1,000–meter EZ will remain in place. Triggers and protocol for pile driving shut down for this zone are described below.

Bluewater will also establish a 7–km EZ at the Delaware site for ESA-listed marine mammals (i.e., large whales) to avoid Level B (behavioral) harassment to these species. Should acoustic monitoring at the Delaware site determine the estimated distance to the 160 dB isopleth (the Level B harassment threshold level) is not accurate, the large whale exclusion zone will be altered for the New Jersey site accordingly, after accounting for depth differences between the two sites.

Pile Driving Shut-down and Delay Triggers and Procedures

At least one protected species observer (PSO) stationed onboard the pile-driving vessel will monitor the established 1,000 m EZ for 30 minutes prior to the soft-start of pile driving. If the PSO observes a marine mammal within this zone during this time, the PSO will notify the Resident Engineer (or other authorized individual) who will then delay pile driving. Pile driving will not commence until the PSO confirms that animal has moved out of and on a path away from the EZ or a PSO has not sighted the animal within the EZ for 15 minutes. If a marine mammal approaches or enters the exclusion zone after pile driving has begun, pile driving will cease until the PSO confirms that the animal has moved out of and on a path away from the EZ or the PSO has not sighted the animal within the EZ for 15 min for species with shorter dive durations (small odontocetes) or 30 min for species with longer dive durations (mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, killer, and beaked whales). If pile driving ceases for 30 minutes or more, the PSO will observe for an additional 30–minute period before he/she will notify the Resident Engineer (or other authorized individual) that none of the aforementioned situations are triggered and pile driving could commence.

On a separate vessel navigating at approximately 4–5 kms around the pile hammer, PSOs will monitor for large whales. Protocol for pile shut down and delay will follow the procedures described above for the 1,000 EZ.

Soft-start Procedures

A soft-start technique will be used at the beginning of pile driving in order to provide additional protection to marine mammals near the project area by allowing them time to vacate the area prior to the commencement of pile-driving activities. The soft-start requires an initial set of 3 strikes from the impact hammer at 40 percent energy with a one minute waiting period between subsequent 3–strike sets. The procedure will be repeated two additional times. If marine mammals are sighted within the exclusion zone prior to pile-driving, or during the soft start, the Resident Engineer (or other authorized individual) will delay pile driving until the animal has moved outside the exclusion zone and no marine mammals are sighted for 15 min for species with shorter dive durations (small odontocetes) or 30 min for species with longer dive durations (mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, killer, and beaked whales).

Use of Sound Attenuation Devices

Bluewater has conducted a sound attenuation device feasibility study and has concluded that traditional devices (e.g., bubble curtain, wood cap, and sleeve) are not practical or feasible for the proposed activity for various reasons (see Bluewater's application). However, Bluewater will continue to explore other options and, if found, will implement a sound attenuation device during pile driving.

Reduced Hammer Force

Bluewater will not ramp-up to full power if, at decreased power, the pile can be driven to the desired depth. Recall that source levels are directly related to hammer force. The estimates to the Level A and Level B harassment thresholds are based on maximum hammer force (900 kJ); hence if less energy is used, noise levels will be less than anticipated.

Time-of-Day and Weather Restrictions

Pile-driving will be limited to day light hours between one-half hour after sunrise and one-half hour prior to sunset. If detection capability of a marine mammal within the EZ is obscured by foul weather (e.g., rough seas, fog), Bluewater will delay or suspend pile driving operations until the EZ is clear.

Vessel Transiting and Operation Watch

Crew aboard all vessels associated with the specified activity transiting to and from the construction site will actively watch for whales and other

marine mammals. Vessel operators will abide by NMFS' Northeast Marine Mammal Viewing Guidelines (*http://www.nero.noaa.gov/prot_res/mmv/*) should a marine mammal be observed close to or on a path towards the vessel.

NMFS has carefully evaluated the aforementioned mitigation measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another: the manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals; the proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and the practicability of the measure for applicant implementation, including consideration of personnel safety, and practicality of implementation. In conclusion, NMFS has determined that the mitigation measures proposed by Bluewater and incorporated into the IHA provide the means of effecting the least practicable adverse impacts on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an ITA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth "requirements pertaining to the monitoring and reporting of such taking." The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for IHAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present.

Visual Monitoring

Bluewater will conduct both visual and acoustic monitoring to better understand impacts to marine mammals from pile driving and estimate take. At least one PSO will be stationed at the pile hammer to monitor, and implement mitigation if necessary, the preliminary 1,000 m EZ and notify the Resident Engineer (or other authorized person) if shut down is necessary. In addition, at least one PSO, in a dedicated visual monitoring vessel circumnavigating the pile hammer at a distance of 4–5 kms, will monitor the Level B harassment zone (i.e., those waters estimated to carry sound levels at or above 160 dB) to determine take numbers for non-listed marine mammals located at a distance to the pile hammer and call for pile driving shut down should a large whale enter this zone. PSOs will be stationed at the highest vantage point possible aboard support vessels (the higher the platform, the greater distance seen). In addition, a visual monitor will be aboard the acoustic monitoring vessel to observe for marine mammals. All PSOs will be in contact with each other and the hammer operator at all times.

Acoustic Monitoring

Bluewater will carry out an acoustic study as described in the application (Attachment 1- Underwater Noise Survey Protocol). The plan includes the use of hydrophone array deployed by vessel within the near field (i.e., within 1,000m) which provides data in real time and two autonomous recorders in the far field (2km and 5km from the hammer) which will archive sound data until they are retrieved and downloaded. The plan is designed to (1) empirically verify the marine mammal exclusion and harassment zones; (2) estimate site specific underwater sound transmission loss decay rates in the action area; (3) provide a digital sound recording of acoustic measurements completed during pile driving; and (4) investigate background noise levels in absence of pile driving. As stated previously, the acoustic models contained within the application are likely an overestimate of sound levels; however, by how much cannot be determined at this time. Empirical data collection will help refine these numbers. Based on the data collected at the each site, the EZ will be adjusted accordingly (but not less than 1,000 m) and from the autonomous recorders at the Delaware site, estimates to the Level B isopleths may be refined for the New Jersey site after adjustment for water depth differences.

Reporting

Bluewater will submit a Final Technical Report, which will incorporate PSO sightings and acoustic survey results, to NMFS within 120 days after the expiration of the IHA. After re-establishment of an exclusion zone, if it occurs, a report detailing the field verification measurements will be submitted to NMFS within 7 days of construction. PSOs will report on operation and sighting data collected during the period of pile driving at each site location. Data will include, but is not limited to: date, time and weather condition during sighting; number of marine mammals observed, by species and age class (if possible); behavior of marine mammal at time of sighting, including direction with respect to hammer location; any observable changes in behavior, including overt reactions (e.g. tail slapping, breaching, distinct change in direction) during sighting; initial and closest distance of marine mammal to hammer; and construction activities occurring at time of sighting, specifically noting if pile driving was ramping up or at full power and, if hammering, how long hammering was occurring before sighting. The acoustic survey results will be presented in the final report and should include, but is not limited to, the following: a detailed account of the methodology employed to collect data (e.g., equipment used, location of vessel in relation to pile during data collection, if the vessel was stationary or drifting, etc.); hammer operation details (i.e., was data collected during ramp-up, upon onset of pile driving, etc.); the levels, durations, and spectral characteristics of the impact pile driving sounds; and the peak, rms, and energy levels of the sound pulses and their durations as a function of distance, water depth, and tidal cycle.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

As discussed in the Effects on Marine Mammals section above, marine mammals exposed to certain levels of pile driving noise may be taken by Level B harassment. Monitoring and mitigation measures will prevent animals from being exposed to levels which could induce Level A (injury) harassment. Responses to the specified activity may include avoidance, altered patterns in foraging, traveling, and resting patterns, masking, and stress hormone production. Many of these effects are difficult to quantify; therefore, NMFS has established threshold criteria which indicate the levels at which any of these effects may occur and a take is possible. Hence these levels are conservative and currently are being refined to better reflect the best scientific data available.

Consistent with Bluewater's application, NMFS has determined that eight species of marine mammals have the potential to be taken, by Level B harassment only, incidental to pile driving. The number of animals authorized to be taken for the Delaware and New Jersey site, respectively, are provided in Table 2 below. These numbers are based on density estimates for potentially encountered non-ESA listed marine mammals which are described in the proposed IHA notice prepared for this action. No ESA-listed species are authorized to be taken by harassment under the IHA. For all species, the requested take is less than 1% of the population; therefore, take numbers can be considered small relative to the population size.

TABLE 2: THE NUMBER OF MARINE MAMMALS, BY SPECIES AND LOCATION, AUTHORIZED TO BE TAKEN BY LEVEL B HARASSMENT.

Species	No. of Animals Delaware	No. of Animals New Jersey
Bottlenose dolphin	15	15
Spotted dolphin	35	35
Common dolphin	20	20
Atlantic White-sided dolphin	15	15
Risso's dolphin	15	15
Pilot whale	10	10
Harbor porpoise	15	10
Harbor seal	35	30

Bluewater will operate support vessels (e.g., small vessels, barges, tugs) to deliver and install equipment at the MDCF site; however, operation of these vessels is not anticipated to result in takes of marine mammals. Vessels will transit to the site slowly and operators will follow NMFS' Northeast Regional marine mammal viewing guidelines. Vessel transit speed is similar to that in NMFS' final rule concerning right whale vessel collision reduction strategy which established operational measures for the shipping industry to reduce the potential for large vessel collisions with North Atlantic right whales while transiting to and from mid-Atlantic ports during right whale migratory periods (73 FR 60173; October 10, 2008). For these reasons (slow transit, viewing guideline adherence) NMFS does not anticipate take of marine mammals incidental to support vessel operation.

Negligible Impact and Small Numbers Analysis and Determination

NMFS has defined "negligible impact" in 50 CFR 216.103 as "...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." In making a negligible impact determination, NMFS considers the following: number of anticipated mortalities; number and nature of anticipated injuries; number, nature, intensity, and duration of Level B harassment; is the nature of the anticipated takes such that we will expect it to actually impact rates of recruitment or survival; and context in which the takes occur- that is will the takes occur in areas (and/or times) of significance for marine mammals (e.g., feeding or resting areas, reproductive areas, rookeries, critical habitat, etc.).

Due to the implementation of mitigation measures, no ESA-listed species will be exposed to sound levels exceeding those established by NMFS as indicative of harassment. Therefore, no take of ESA-listed marine mammals are anticipated not authorized in the IHA. Non-ESA listed marine mammals may be exposed temporarily to pile driving noise; however, at each location, pile driving will occur for only 3–8 hours in total. The waters in the mid-Atlantic OCS are not designated as critical habitat for ESA-listed marine mammals, nor do they provide significant habitat for any marine mammal species (i.e., no significant foraging or reproductive areas are known to be in this area). Animals within the action area are likely to be traveling, resting, socializing or opportunistically foraging. Noise from pile driving may temporarily disturb animals in these behavioral states and induce mild TTS; however, no significant or long-term impacts are anticipated given the implementation of mitigation measures, short duration of pile driving and the anticipation that individuals are not expected to linger within the action area. While pile driving noise may affect more than one individual, population level effects are not anticipated as impacts are anticipated to be limited to short term behavioral changes in individuals (e.g., avoidance, cessation of activity at time of noise exposure, change in vocalization patterns) and potential masking effects. These effects will not alter fitness or reproductive success. Bluewater will not conduct pile driving at both sites simultaneously; therefore, no cumulative impacts which could arise from exposure to noise from multiple pile hammers are expected. Finally, the project footprint is extremely small, and each MDCF will be removed after 1–2 years. Therefore, no long term impacts to marine mammal habitat are anticipated.

Bluewater has conducted a conservative analysis of estimated sound levels and used these estimates to determine take. Hence, the number of animals potentially taken is likely an overestimate as it is not anticipated that all species listed in Table 2 will be encountered during the short duration of pile driving. The number of animals requested to be taken is considered small (less than 1 percent) when compared to the estimated stock size for each species. Again, no ESA-listed species will be taken based on implementation of the proposed mitigation and monitoring measures and no Level A (injurious) harassment, serious injury, or mortality is

anticipated nor will any be authorized in the proposed IHA.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS found that pile driving conducted by Bluewater during MDCF installation will result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking from will have a negligible impact on the affected species or stocks. Therefore, issuance of an IHA to Bluewater was warranted.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action.

Endangered Species Act (ESA)

NMFS Protected Resources determined that, based on the implementation of the monitoring and mitigation plan developed by Bluewater, in consultation with NMFS, is not likely to adversely affect listed marine mammal species. NMFS Northeast Region provided concurrence with this determination on September 14, 2010.

National Environmental Policy Act (NEPA)

On June 2, 2009, the BOEM issued an EA and associated Finding of No Significant Impact (FONSI) on the *Issuance of Leases for Wind Resource Data Collection on the Outer Continental Shelf Offshore Delaware and New Jersey.* The EA evaluates the impacts to the human environment, including those to marine mammals, from issuing seven leases in the Atlantic OCS for purposes of constructing, operating, and decommissioning a MDCF in each lease block. The MDCFs proposed by Bluewater are included in that analysis. BOEM concluded that the proposed action would not have a significant adverse impact on the human environment. Therefore, preparation of an EIS was not necessary. After independently reviewing BOEM's EA, NMFS determined the EA adequately evaluated impacts to marine mammals anticipated from issuance of the IHA. Accordingly, NMFS adopted BOEM's EA and issued a FONSI. Therefore, the preparation of another EA by NMFS for issuance of an IHA to Bluewater for the specified activity was not warranted.

Dated: September 29, 2010.

Helen M. Golde,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–24987 Filed 10–4–10; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XY30

Takes of Marine Mammals Incidental to Specified Activities; Construction of the Parsons Slough Sill Project

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

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received an application from the NOAA Restoration Center, Southwest Region, for an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to the Parsons Slough Sill Project. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to the NOAA Restoration Center, Southwest Region, to take, by Level B Harassment only, small numbers of harbor seals (*Phoca vitulina richardsi*) during the specified activity.

DATES: Comments and information must be received no later than November 4, 2010.

ADDRESSES: Comments on the application should be addressed to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. The mailbox address for providing e-mail comments is *PR1.0648-XY30@noaa.gov.* NMFS is not responsible for e-mail comments sent to addresses other than the one provided here. Comments sent via e-mail, including all attachments, must not exceed a 10-megabyte file size.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

A copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (*see* **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Brian D. Hopper or Candace Nachman, Office of Protected Resources, NMFS, (301) 713–2289, or Monica DeAngelis, NMFS Southwest Region, (562) 980–3232.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the U.S. can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorization published in the **Federal Register** for the incidental harassment of marine mammals. Within 45 days of the

close of the comment period, NMFS must either issue or deny the authorization.

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as:

> Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

NMFS received an application on August 5, 2010, from the NOAA Restoration Center, Southwest Region, for the taking, by harassment, of marine mammals incidental to the construction of a partially submerged tidal barrier (sill) across the mouth of the Parsons Slough Channel. Parsons Slough is located on the southeast side of the Elkhorn Slough Estuary, which is situated 90 miles (145 km) south of San Francisco and 20 miles (32 km) north of Monterey in Monterey County, California. The application was determined to be complete on August 16, 2010. The sill structure would be constructed of steel sheet piles and would extend 270 ft (82.3 m) across the mouth of Parsons Slough. The sheet pile wall would be supported on two rows of seven end-bearing piles. All sheet pile and end-bearing piles would be driven starting with a vibratory hammer to set the sheets but may require an impact hammer to complete driving. Because pile driving has the potential to expose marine mammals to heightened levels of underwater and ambient noise, it may result in behavioral harassment to marine mammals located in the action area. An authorization under section 101(a)(5)(D) of the MMPA is required. The proposed action will result in the incidental take, by Level B harassment, of Pacific harbor seals (*Phoca vitulina richarsi*). The specified activities are also likely to result in the take by incidental harassment of southern sea otters (*Enhydra lutirs*). The U.S. Fish and Wildlife Service (USFWS) has management jurisdiction over southern sea otters. NOAA has applied for and received from USFWS a separate MMPA Section 101(a)(5)(D) authorization for incidental take of sea otters. The potential take of sea otters is not further addressed in this notice.

Description of the Specified Activity

The proposed sill structure would be located in the vicinity of the Union Pacific Railroad bride, milepost 103.27 Coast Subdivision, which is located at the mouth of the Parsons Slough Complex. The bridge is a 165 ft (50.3 m) long concrete slab girder bridge that spans the Parsons Slough Channel. The overall goal of the proposed action is to reduce tidal scour within the Elkhorn Slough action area in general and the Parsons Slough study area in particular. Within the past 60 years, the proportion of salt marsh habitat and mudflat habitat within the Elkhorn Slough has reversed as a result of tidal erosion and inundation of interior marsh areas. Currently, there are approximately 800 acres (3.2 km^2) of salt marsh and tidal creeks within Elkhorn Slough, 1,600 acres (6.5 km^2) of mudflat, and 300 acres (1.2 km^2) of tidal channels. Modeling efforts predict that an additional 550 acres (2.2 km^2) of salt marsh would be lost over the next 50 years if tidal erosion in Elkhorn Slough is not addressed. Without intervention, excessive erosion would continue to widen tidal channels and convert salt marsh to mud flat. This would result in a significant loss of habitat function and a decrease in estuarine biodiversity.

In order to reduce tidal scour, the NOAA Restoration Center, Southwest Region, proposes to construct a partially submerged tidal barrier (sill), similar to an underwater wall, across the mouth of Parsons Slough. The sill structure would prevent head cutting (*i.e.,* erosion in a channel caused by an abrupt change in slope) in Elkhorn Slough from migrating upstream into Parsons Slough, would retain sediment that accretes within Parsons Slough, and would reduce the tidal prism of Parsons Slough. This reduction in tidal prism would reduce current velocities between Parsons Slough and the mouth of Elkhorn Slough, thereby reducing tidal scour. The proposed project, which is referred to as the Parsons Slough Project, would also include establishment of artificial reefs to support populations of Olympia oysters (*Ostrea lurida*) in the northeastern part of the Parsons Slough Complex.

As mentioned earlier in this document, the sill structure would be constructed of steel sheet piles that would extend 270 ft (82.3 m) across the mouth of the Parsons Slough Channel. A 100 ft (30 m) wide lower area, located in the center of the structure, would allow water to flow between Parsons Slough and Elkhorn Slough. This portion of the structure would be submerged more than 99 percent of the time. The center of the lower part of the structure would include a notch approximately 25 ft (7.6 m) wide, with the top elevation of the sheet pile in this notch at an elevation of −5 ft (−1.5 m). The notch would provide for the passage of water at all tide levels and would facilitate the movement of fish and wildlife into and out of Parsons Slough. The top elevation of the sheet pile in the remaining 75 ft (23 m) of the central section of the base structure would be −2 ft (−0.6 m). The remaining portions of the sheet piles to the left and right of the center portion of the structure would have a top elevation of 9.6 ft (3 m).

All in-channel construction activities would be constructed from barges, and no heavy equipment would enter the channels. Most of these construction activities are in-water (*e.g.,* installation of end-bearing piles and sheet piles, placement of rockfill buttress).

Installation of the sheet pile wall would be supported by two rows of seven end-bearing piles, as well as a single row of sheet pile located between the piles. The end-bearing piles would be driven through the soft soils to penetrate 10 ft (3 m) below the top of the dense sandy deposits that underlie the soft soils at an elevation of approximately −80 ft (−24.4 m). Additionally, up to 45 temporary end-bearing piles may be installed in the main channel of Elkhorn Slough at the Kirby Park staging site (approximately 2 mi (3.2 km) from the project site) to facilitate barge docking and loading (if the temporary dock is constructed on pilings, rather than temporary rock-fill). These piles, if necessary, would be removed after construction when the floating dock is disassembled. Pile driving at the staging site is not expected to result in any harbor seal takes. Harbor seals usually occur just beyond the mouth of Elkhorn Slough in the Moss Landing harbor and in the Salinas River channel south of the Moss Landing Bridge, and the lower portion of Elkhorn Slough extending up to Parsons Slough and Rubis Creek. Harbor seals do not typically use the part of the estuary that leads up to Kirby Creek and the nearest occupied areas and haul-out locations (approximately 2 mi (3.2 km) to the south) are beyond the estimated distances to NMFS' current threshold sound levels from pile driving proposed at the Kirby Park staging area (*see* Table 3 and Table 4).

A vibratory hammer would be used to start driving all sheet pile and end-bearing piles, but an impact hammer may be required to complete driving. If an impact hammer is required during construction, cushioning blocks would be used to attenuate the sound. Vibratory hammers clamp onto the sheet pile, therefore, no cushioning blocks

would be used during vibratory pile driving.

TABLE 1—TYPICAL NEAR-SOURCE (10M) UNDERWATER NOISE LEVELS

Type of pile	Driving technique	RMS level
H-Pile	Impact Hammer	183 dB
H-Pile	Vibratory Hammer	155 dB
Sheet Pile	Impact Hammer	175 dB
Sheet Pile	Vibratory Hammer	160 dB

TABLE 2—AIRBORNE NOISE NEVEL (15 M)

Type of pile	Driving technique	L_{max}/rms level
H-Pile	Impact Hammer	109 dBA
H-Pile	Vibratory Hammer	95 dBA
Sheet Pile	Impact Hammer	106 dBA
Sheet Pile	Vibratory Hammer	97 dBA

The applicant anticipates that construction would last 11 to 15 weeks beginning around November 1, 2010 and ending in February 2011. In-water construction would primarily occur during slack tide. Actual pile driving time during this work window will depend on a number of factors, such as sediments, currents, presence of marine mammals, and equipment maintenance; however, the applicant anticipates that it will take approximately 20 days to install the end-bearing piles and sheet pile during the 11 to 15 weeks of construction. Construction activities at night are also anticipated during this 11 to 15 week period but would not last for more than 5 hrs at a time (duration of a slack tide at night).

Description of Marine Mammals in the Area of the Specified Activity

Two species of marine mammals may be affected by the proposed action: Pacific harbor seals and southern sea otters (*Enhydra lutirs*). However, southern sea otters are managed by the U.S. Fish and Wildlife Service and will not be considered further in this proposed IHA notice.

Pacific Harbor Seals

Harbor seals are the most widely distributed pinniped species, occurring on both sides of the northern Pacific and Atlantic Oceans (NMFS, 2005). The Pacific harbor seal ranges from Baja Mexico to the Aleutian Islands and occurs along the entire length of the California coast. In 2005, harbor seal populations in California were estimated at 34,233 and have been growing at an estimated rate of 3.5 percent from 1982 to 1995 (NMFS, 2005). Harbor seals are not listed as depleted under the MMPA or threatened or endangered under the Endangered Species Act (ESA).

The harbor seal breeding season lasts from March through June each year, with peak births occurring between April and May. Females give birth to one pup each year and mate again shortly after weaning. Harbor seals are not territorial on land but they do maintain spacing between individuals in haul outs.

Harbor seals feed on fish, crustaceans, and some cephalopods. Foraging occurs in shallow littoral waters, and common prey items include flounder, sole, hake, codfish, sculpin, anchovy, and herring. Harbor seals are typically solitary while foraging, although small groups have been observed.

Harbor seals are rarely found in pelagic waters and typically stay within the tidal and intertidal zones. On land, harbor seals haul out on rocky outcrops, mudflats, sandbars, and sandy beaches with unrestricted access to water and with minimal human presence. Harbor seals are non-migratory, but will make short to moderate distance journeys for feeding and breeding, including venturing into estuaries and rivers (CDFG, 2005).

Harbor seals use Elkhorn Slough for hauling out, resting, socializing, foraging, molting, and reproduction. Within the Parsons Slough Complex, there are an estimated 100 harbor seals using the area on a daily basis (Maldini *et al.,* 2009). In Parsons Slough, harbor seals use exposed mudflats to haul-out during low tide. During high tide, harbor seals are absent from Parsons Slough (Maldini *et al.,* 2009). There are five main haul-out areas within the Parsons Slough Complex, two of which are located east and west of the Union Pacific Railroad bridge, respectively (Maldini *et al.,* 2009). Consistent with harbor seal behavior, abundance on the mudflats is highest during the day and drops after sunset. Harbor seal activity at night is unknown, but researchers speculate that the animals leave Parsons Slough at night to forage in the main channel or Monterey Bay (Maldini *et al.,* 2009). Maldini et al. (2009) found that exit times peaked at 5 pm and continued to be high until 8 pm with another smaller peak occurring around 10 pm. Additional information on the Pacific harbor seal can be found in the NMFS Stock Assessment Report (SAR). The 2009 Pacific SAR is available at *http://www.nmfs.noaa.gov/pr/pdfs/sars/po2009.pdf.*

Potential Effects of the Specified Activity on Marine Mammals

Sound is a physical phenomenon consisting of minute vibrations that travel through a medium, such as air or water. Sound levels are compared to a reference sound pressure to identify the medium. For air and water, these reference pressures are "re 20 microPa" and "re 1 microPa," respectively. Sound is generally characterized by several variables, including frequency and sound level. Frequency describes the sound's pitch and is measured in hertz (Hz) or kilohertz (kHz), while sound level describes the sound's loudness and is measured in decibels (dB). Sound level increases or decreases exponentially with each dB of change. For example, 10-dB yields a sound level 10 times more intense than 1 dB, while a 20 dB level equates to 100 times more intense, and a 30 dB level is 1,000 times more intense. However, it should be noted that humans perceive a 10 dB increase in sound level as only a doubling of sound loudness, and a 10 dB decrease in sound level as a halving of sound loudness.

Marine mammals use sound for vital life functions, and introducing sound into their environment could disrupt those behaviors. Sound (hearing and vocalization) serves four main functions for marine mammals. These functions include: (1) Providing information about their environment; (2) communication; (3) enabling remote detection of prey; and (4) enabling detection of predators. Noise from pile driving may affect marine mammals at a level which could cause Level B behavioral harassment by disturbing important behavioral patterns of Pacific harbor seals. The distances at which these sounds may be audible depend on the source levels, ambient noise levels, and sensitivity of the receptor (Richardson *et al.,* 1995). Mitigation measures (*see* Proposed Mitigation section later in this document) and the low source level of vibratory pile driving (the main method used to install sheet pile and end-bearing piles in this proposed project) are expected to prevent marine mammals from being exposed to injurious levels of sound.

Pinnipeds produce a wide range of social signals, most occurring at relatively low frequencies (Southall *et al.,* 2007), suggesting hearing is keenest at these frequencies. Pinnipeds communicate acoustically both on land and in the water, suggesting that they possess amphibious hearing and have different hearing capabilities dependent upon the media (air or water). Based on numerous studies, as summarized in Southall *et al.* (2007), pinnipeds are more sensitive to a broader range of sound frequencies in water than in air. In-water, pinnipeds can hear frequencies from 75 Hz to 75 kHz. In air, the lower limit remains at 75 Hz, but the highest audible frequencies are only around 30 kHz (Southall *et al.,* 2007).

Hearing Impairment

Temporary or permanent hearing impairment is possible when marine mammals are exposed to very loud sounds. Hearing impairment is measured in two forms: Temporary threshold shift (TTS) and permanent threshold shift (PTS). Relationships between TTS and PTS have not been studied in marine mammals, but are assumed to be similar to those in humans and terrestrial mammals. There is no empirical data for onset of PTS in any marine mammal, therefore, PTS-onset must be estimated from TTS-onset measurements and from the rate of TTS growth with increasing exposure levels above those eliciting TTS-onset. NMFS presumes PTS to be likely if the threshold is reduced by ≥ 40 dB (*i.e.,* 40 dB of TTS). Due to proposed mitigation measures and the fact that source levels of the impact and vibratory hammers are below the 190 dB injury threshold used by NMFS for pinniped species, NMFS does not expect that harbor seals will be exposed to levels that could elicit PTS; therefore, it will not be discussed further.

Temporary Threshold Shift (TTS)

TTS is the mildest form of hearing impairment that can occur during exposure to a loud sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises, and a sound must be louder in order to be heard. TTS can last from minutes or hours to (in cases of strong TTS) days. For sound exposures at or somewhat above the TTS-onset threshold, hearing sensitivity recovers rapidly after exposure to the noise ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals. Southall *et al.* (2007) considers a 6 dB TTS (*i.e.,* baseline thresholds are elevated by 6 dB) sufficient to be recognized as an unequivocal deviation and thus a sufficient definition of TTS-onset. Because it is non-injurious, NMFS considers TTS to be Level B harassment that is mediated by physiological effects on the auditory system; however, NMFS does not consider onset TTS to be the lowest level at which Level B harassment may occur.

Sound exposures that elicit TTS in pinnipeds underwater have been measured in harbor seals, California sea lions, and northern elephant seals from broadband or octaveband (OBN) non-pulse noise ranging from approximately 12 minutes to several hours (Kastak and Schusterman, 1996; Finneran *et al.,* 2003; Kastak *et al.,* 1999; Kastak *et al.,* 2005). Collectively, Kastak *et al.* (2005) analyzed these data to indicate that in the harbor seal a TTS of ca. 6 dB occurred with 25 minute exposure to 2.5 kHz OBN with sound pressure level (SPL) of 152 dB re 1 microPa (as summarized in Southall *et al.,* 2007). Underwater TTS experiments involving exposure to pulse noise are limited to a single study. Finneran *et al.* (2003) found no measurable TTS when two California sea lions were exposed to sounds up to 183 dB re 1 microPa (peak-to-peak).

Behavioral Impacts

The source of underwater noise during construction would be pile driving to install the end-bearing piles and sheet pile tidal barrier. There are limited data available on the effects of non-pulse noise on pinnipeds in-water; however, field and captive studies to date collectively suggest that pinnipeds do not strongly react to exposure between 90–140 dB re 1 microPa. Jacobs and Terhune (2002) observed wild harbor seal reactions to acoustic harassment devices (AHDs) around nine sites. Seals came within 144.4 ft (44 m) of the active AHD and failed to demonstrate any behavioral response when received SPLs were estimated at 120–130 dB re 1 microPa. In a captive study, a group of seals were collectively subjected to non-pulse sounds (*e.g.,* vibratory pile driving) at 8–16 kHz (Kastelein, 2006). Exposures between 80–107 dB re 1 microPa did not induce strong behavioral responses; however, a single observation at 100–110 dB re 1 microPa indicated an avoidance response at this level. The group returned to baseline conditions following exposure (*i.e.,* no long term impact). Southall *et al.* (2007) notes contextual differences between these two studies, noting that the captive animals were not reinforced with food for remaining in the noise fields, whereas free-ranging subjects may have been more tolerant of exposures because of motivation to return to a safe location or approach enclosures holding prey items. Southall *et al.* (2007) reviewed relevant data from studies involving pinnipeds exposed to pulse noise (*e.g.,* impact pile driving) and concluded that exposures of 150 to 180 dB re 1 microPa generally have limited potential to induce avoidance behavior.

Seals exposed to sound levels that exceed the Level B harassment threshold (120 dB for non-pulse; 160 dB for pulse) may exhibit temporary avoid behavior around the Union Pacific Railroad bridge, which may affect movement of seals under the bridge or inhibit them from resting at haul-out sites near the bridge. The estimated 11–15 weeks required for construction may result in the temporary abandonment of haul-out sites near the bridge and within Parsons Slough. Although harbor seals may temporarily abandon haul out sites, there are an abundance of other haul-out sites in the area. Additionally, the required mitigation measures restrict construction to the non-breeding season to avoid impacts to potentially sensitive mother-pup pairs. In general, ambient noise levels in the area are low; however, animals in the vicinity of the project site have been exposed to various types and levels of anthropogenic noise—from recreational boating, to the 15–20 trains that pass daily over the Union Pacific Railroad bridge. Harbor seals have also been exposed to in-water construction activities at the site and animals are likely tolerant or habituated to

anthropogenic disturbance, including pile driving. For example, in October 2002, the Union Pacific Railroad replaced the existing wooden pile trestle bridge spanning the Parsons Slough Channel with a 165 ft (50.3 m) slab girder bridge. Biological monitors reported that harbor seals were present during construction and came and went from the site without any visible signs of stress or undue harassment (MACTEC Engineering and Consulting, 2003).

Based on these studies and monitoring reports, NMFS has preliminarily determined that harbor seals exposed to sound levels exceeding the Level B harassment threshold (120 dB for non-pulse; 160 dB for pulse) may exhibit temporary avoidance behavior. The most likely impact to harbor seals from the sheet pile and end-bearing pile installation would be temporary disruption of resting patterns because individual harbor seals may abandon haul out sites and leave the area during construction activities. However, the scheduling of construction activities during the non-breeding season will avoid more severe effects such as reduced pup survival due to mother-pup separation and interrupted suckling bouts. Temporary hearing loss is unlikely for those harbor seals that enter into the zone of Level B harassment because source levels from vibratory pile driving are not loud enough to induce TTS. Furthermore, the short duration of impact pile driving and close proximity to the source necessary to induce TTS makes it unlikely that harbor seals would be exposed to source levels loud enough to induce TTS. Permanent hearing loss or other harm is not anticipated due to monitoring and mitigation efforts (described below) and the low source levels of pile driving hammers to be used in this proposed project; however, even without mitigation measures, it is unlikely that harbor seals would experience Level A harassment, serious injury or mortality because of the close proximity to the source necessary to induce these types of impacts and the avoidance behavior expected of harbor seals during pile driving activities.

Anticipated Effects on Habitat

The proposed action requires the placement of about 2,000 yd^3 (1,529 m^3) of fill (rock and sheet pile), which would result in the permanent loss of approximately 0.75 acres (3,035 m^2) of subtidal habitat within the project footprint. The expected extent of direct habitat loss is equivalent to approximately 2.3 percent of the subtidal habitat area (32.9 acres (0.13 km^2)) present within Parsons Slough, and a fraction of the subtidal habitat within Elkhorn Slough (1,400 acres (5.7 km^2)). Although the proposed action would permanently alter habitat within the project footprint, harbor seals haul-out in many locations throughout the estuary, and the proposed action is not expected to have any habitat-related effects that could cause significant or long-term consequences for individual harbor seals or their population.

Long-term operation of the proposed sill is expected to result in the conversion of approximately 11 acres (0.04 km^2) of intertidal mudflat habitat to subtidal habitat. The conversion of intertidal habitat to subtidal habitat will have no adverse effect and possibly a long-term beneficial effect on harbor seals by improving ecological function of the slough, such as higher species diversity, more species abundance, larger fish, and better habitat. Moreover, decrease of mudflat by up to 11 acres (0.04 km^2) would not cause significant or long-term consequences for individual harbor seals or their population because harbor seals typically use a very small percentage of the potential haul-out sites that currently exist throughout the slough complex. Therefore, the proposed activity is not expected to have any habitat-related effects that could cause significant or long-term consequences for individual harbor seals or their population.

It is unlikely that the sill structure itself, when completed, will result in long-term adverse effects on harbor seal movements through the slough because the sill structure allows for continued access to Parsons Slough by aquatic species, including harbor seals. A 25 ft (7.6 m) long section of the sill will be completely underwater with a minimum of 5 ft (1.5 m) of water above it at all times. On either side of this 25 ft (7.6 m) section will be two 37 ft (11.3 m) sections that will be under 2 ft (.6 m) of water. The remaining 170 ft (51.8 m) of the sill structure will be above water. With respect to increased velocities, the current velocity of water flowing under the bridge is 5.6 ft (1.7 m) per second during ebbing tides and 4.9 ft (1.5 m) per second during flood tides (Moffat and Nichol, 2008). When completed, the sill structure will increase current velocities in the vicinity of the structure. The greatest turbulence would be during spring tides near low tide. For example, the applicant's modeling results indicate that peak velocities at the sill during spring ebb tide would not exceed 10.7 ft (3.3 m) per second, which is much slower than the average wave velocities in Monterey Bay that harbor seals easily navigate on a daily basis. At −5 ft (−1.5 m) elevation, where velocities are anticipated to be higher, velocities on an ebb tide would be less than 5.6 ft (1.7 m) per second approximately 90 percent of the time; velocities would never exceed about 4.5 ft (1.4 m) per second on a flood tide. The sill structure would not alter velocities during slack tide; therefore, conditions at optimal movement times would not change from the baseline conditions. During times of high velocity, the seals may avoid crossing the sill structure. The exception to this may be inexperienced mothers with young pups that could get swept into Parsons Slough. This would not injure pups, but it may result in pups staying in Parsons Slough longer than they would otherwise. Therefore, the proposed activity is not expected to have any habitat-related effects that could cause significant or long-term consequences for individual harbor seals or their population.

Harbor seals and forage fish may occupy the same habitat and harbor seal distributions within the estuary reflect foraging locations to some extent. Noise from pile driving would result in degradation of in-water habitat; however, this impact would be short term and site-specific, and habitat conditions would return to their pre-disturbance state shortly after the cessation of in-water construction activities. In addition, research by Oxman (1995) and Harvey *et al.* (1995) comparing catch rates from trawls conducted in the Slough to species detected in seal scat found that seals primarily feed between Seal Bend and the oceanic nearshore shelf in Monterey Bay. Oxman (1995) also radio-tagged seals and found that they all spend their nights diving within 0.5 to 7 km of shore, most (88 percent) 1.25 km south of the Slough entrance, with the others (12 percent) either 4 km north at the Pajaro Rivermouth, or 7.25 km north at Sunset Beach, Santa Cruz. Therefore, because any habitat disturbance caused by pile driving will be short-term and site specific, and in light of the fact that harbor seals may conduct most foraging in the nearshore oceanic and not at the project site, NMFS does not expect the proposed action to have habitat-related effects on either forage fish populations or harbor seal foraging success that could cause long-term consequences for individual harbor seals or their population.

Proposed Mitigation

In order to issue an incidental take authorization (ITA) under Section 101(a)(5)(D) of the MMPA, NMFS mustset forth the permissible methods

of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (where relevant).

The applicant has proposed mitigation measures in their application for reducing impacts to environmental resources. For example, installing end-bearing piles and sheet pile with a vibratory hammer instead of an impact hammer will introduce less sound into the marine environment and prevent marine mammals from being exposed to injurious levels of sound. Some of the following proposed mitigation measures that follow were developed by the NOAA Restoration Center, Southwest Region and accepted by NMFS while others were developed in discussions between the applicant and NMFS' Office of Protected Resources. These proposed mitigation measures are designed to eliminate the potential for injury and reduce Level B harassment of marine mammals.

Establishment of Safety Zones and Shut Down Requirements

Vibratory pile driving does not result in source levels that are at or above NMFS' harassment threshold for Level A harassment; therefore, shut down zones would not be required for vibratory pile driving. For impact pile driving, the isolpleth for the Level A harassment threshold (190 dB re 1 microPa rms) is modeled to be within 10 ft (3 m) of end-bearing piles driven with a impact hammer and 5 ft (1.5 m) of sheet piles driven with an impact hammer; The NOAA Restoration Center, Southwest Region, and NMFS, however, have proposed to delay impact pile driving if a harbor seal comes within 33 ft (10 m) of the pile being driven, which further reduces the risk of Level A harassment. In addition, if an impact hammer is required during construction, cushioning blocks would be used to help attenuate the sound.

Construction Timing

Pile driving is anticipated to occur during an 11 to 15 week period beginning around November 1, 2010 and ending in February 2011. This work window was selected to coincide with the non-pupping season for harbor seals and avoid haul-out site abandonment during pupping season that may result in reduced pup survival due to mother/pup separation and interrupted suckling bouts. The work window also coincides with the U.S. Fish and Wildlife Department's required construction work window to avoid the peak pupping period for sea otters (75 FR 42121, July 20, 2010). In addition, in-water construction activities such as pile driving will be conducted during high tide when haul-out sites are inaccessible, and harbor seals are largely absent from Parsons Slough (Maldini *et al.,* 2009).

Limited Use of Impact Hammer

All piles would be installed using a vibratory pile driver unless sufficient depth cannot be reached, at which point an impact hammer may be used. If an impact hammer is required, cushioning blocks would be used as an attenuation device to reduce hydroacoustic sound levels and avoid the potential for injury. These actions would also serve to reduce impacts to harbor seals.

Mitigation Monitoring

Monitoring during construction of the sill would occur from an observation post adjacent to the Union Pacific railroad bridge as well as from a zodiac. Monitoring would be conducted by qualified, NMFS approved protected species observers (PSOs). On a daily basis, construction monitoring would begin 30 minutes prior to the initiation of construction activities and continue until 30 minutes after construction activities have ceased for the day. The PSO would maintain a log that documents numbers of marine mammals present before, during, and at the end of daily construction activities. In addition, the PSO would record basic weather conditions (ambient temperature, tidal activity, precipitation, wind, horizontal visibility, etc.), as well as marine mammal behavior.

The PSO would have the authority to cease construction if a harbor seal is detected within or approaching the safety zone or if an animal appears injured. Within 30 days of the completion of the sill construction, a report would be completed and submitted to NMFS that would include a summary of the daily log maintained by the PSO during construction. In addition, the report would include an assessment of the number of harbor seals that may have been harassed as a result of pile driving activities, based on direct observation of harbor seals observed in the area.

Soft Start to Pile Driving Activities

A "soft start" technique would be used at the beginning of each pile installation to allow any harbor seals that may be in the immediate area to leave before the activity reaches its full energy. The soft start requires contractors to initiate pile driving with a vibratory hammer for 15 seconds at reduced energy followed by a 1-minute waiting period. This procedure would be repeated two additional times. Due to the short duration of impact pile driving (typically lasting between 1 and 10 minutes), the traditional ramp-up requirement does not apply because it would actually increase the duration of noise emitted into the environment, and monitoring should effectively detect harbor seals within or near the proposed impact pile driving shut down zone. If any harbor seals are sighted within or approaching the 33 ft (10 m) shut down zone prior to pile driving, the construction contractor will delay pile-driving until the animal has moved outside and is on a path away from the safety zone or after 15 minutes have elapsed since the last sighting.

NMFS has carefully evaluated the applicant's proposed mitigation measures. NMFS accepted some of the applicant's proposed measures, such as the seasonal timing of construction, suggested additional mitigation measures like the establishment of a 33 ft (10 m) safety zone and hydroacoutic monitoring to measure sound pressure levels from pile driving, and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another: (1) The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals; (2) the proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and (3) the practicability of the measure for applicant implementation, including consideration of personal safety, and practicality of implementation.

Based on our evaluation of the applicant's proposed measures, as well as other measures developed by NMFS in cooperation with the applicant, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an ITA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must, where

applicable, set forth "requirements pertaining to the monitoring and reporting of such taking". The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area.

Monitoring during construction of the sill would occur from an observation post adjacent to the Union Pacific railroad bridge as well as from a zodiac. Monitoring would be conducted by qualified, NMFS approved PSOs. On a daily basis, construction monitoring would begin 30 minutes prior to the initiation of construction activities and continue until 30 minutes after construction activities have ceased for the day. The PSO would maintain a log that documents numbers of marine mammals present before, during, and at the end of daily construction activities. In addition, the PSO would record basic weather conditions (ambient temperature, tidal activity, precipitation, wind, horizontal visibility, etc.), as well as marine mammal behavior.

The PSO would have the authority to cease construction if a harbor seal is detected within or approaching the safety zone or if an animal appears injured. Within 30 days of the completion of the sill construction, a report would be completed and submitted to NMFS that would include a summary of the daily log maintained by the PSO during construction. In addition, the report would include an assessment of the number of harbor seals that may have been harassed as a result of pile driving activities, based on direct observation of harbor seals observed in the area.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal stock in the wild by causing disruption of behavioral patterns, including but not limited to, migration, breathing, nursing, breeding, feeding, or shelter [Level B harassment].

Based on the NOAA Restoration Center, Southwest Region's application and subsequent analysis, the impact of the described pile driving operations may result in, at most, short-term modification of behavior by small numbers of harbor seals within the action area. Harbor seals may avoid the area or halt any behaviors (*e.g.,* resting) when exposed to anthropogenic noise. Due to the abundance of suitable resting habitat available in the greater Elkhorn Slough estuary, the short-term displacement of resting harbor seals is not expected to affect the overall fitness of any individual animal.

Current NMFS practice regarding in-water exposure of marine mammals to anthropogenic noise is that in order to avoid the potential for injury of marine mammals (*e.g.,* PTS), pinnipeds should not be exposed to impulsive sounds of 190 dB rms or above. This level is considered precautionary as it is likely that more intense sounds would be required before injury would actually occur (Southall et al., 2007). Potential for behavioral harassment (Level B) is considered to have occurred when marine mammals are exposed to sounds at or above 160 dB rms for impulse sounds (*e.g.,* impact pile driving) and 120 dB rms for non-pulse noise (*e.g.,* vibratory pile driving), but below the thresholds mentioned above. These levels are considered to be precautionary.

Current NMFS practice regarding in-air exposure of pinnipeds to noise generated from human activity is that the onset of Level B harassment for harbor seals is 90 dB rms re 20 microPa. In-air noise calculations from using an impact pile driver predict that noise levels will reach 90 dB rms re 20 microPa within 600 ft (183 m) for end-bearing piles and 450 ft (137 m) for sheet piles. For installation using a vibratory hammer, noise levels will reach 90 dB rms within 100 ft (30 m) of the end-bearing pile and 120 ft (36.6 m) for sheet pile. Harbor seals are known to haul-out on the mudflats 200 ft (61 m) east of the work site and 680 ft (207 m) west of the work site, therefore, in-air noise may contribute to harassment for the proposed action.

Estimated distances to NMFS' current threshold sound levels from pile driving during the Parsons Slough Sill Project are presented in Table 3. These estimates are based on the worst case scenario of driving the H-piles and sheet piles but would be carried over for all pile driving. Note that despite short distances to the Level A harassment isolpleth, the NOAA Restoration Center, Southwest Region, has proposed to implement a 10 m safety zone until empirical pile driving measurements can be made and distances to this threshold isopleths can be verified.

TABLE 3—UNDERWATER DISTANCES TO NMFS HARASSMENT THRESHOLD LEVELS DURING PILE DRIVING

[dB re: 1μPa rms]

Pile type	Hammer type	Sound levels (rms)		
		190 dB	160 dB	120 dB
H–Piles	Impact	3 m (10 ft)	227 m (745 ft)	n/a
H–Piles	Vibratory	0	n/a	1,140 m (3,740 ft)
Sheet Pile	Impact	1.5 m (5 ft)	75 m (245 ft)	n/a
Sheet Pile	Vibratory	0	n/a	2,256 m (7,400 ft)

TABLE 4—AIRBORNE DISTANCES TO NMFS HARASSMENT THRESHOLD LEVELS DURING PILE DRIVING

[dB re: 20μPa rms]

Pile type	Hammer type	Sound level (rms)
		90 dB
H–Piles	Impact	600 m
H–Piles	Vibratory	100 m
Sheet Pile	Impact	450 m
Sheet Pile	Vibratory	120 m

It is difficult to estimate the number of harbor seals that could be affected by the installation of end-bearing piles and sheet pile because the animals only venture in the project areas to haul-out during the day when the tide is low. In-water construction will occur near several haul-out sites and, although the construction activities are planned to take place during slack tide (some of which will be on either side of high tide, when harbor seals are less likely to be present), there may still be animals exposed to sound from pile driving even if the number of individual harbor seals expected to be encountered is very low. These individuals would mostly likely be adult males and females as well as juveniles. The NOAA Restoration Center, Southwest Region requests, and NMFS proposes, authorization to take 2,000 individual harbor seals incidental to pile driving activities over the course of the proposed action (November 1, 2010 through February 28, 2011). This is a estimate based on the average number of harbor seals that occupy Parsons Slough during the day (100) multiplied by the total number of days the applicant expects pile driving activities to occur (20 days). NMFS considers this to be an over-estimate for the following reasons: (1) As mentioned above, haul-out sites are inaccessible to harbor seals during high tide and NMFS would not expect harbor seals to be affected by pile driving activities during the days/times when pile driving and high tide events co-occur; (2) harbor seals are likely absent from Parsons Slough at night when they are likely foraging in Monterey Bay and will not be exposed to sound generated during pile driving that is proposed to take place in the evening hours (no more than 5 hrs at a time); and, (3) based on previous survey effort conducted in Parsons Slough, harbor seals would move out of the disturbance area when construction activities are initiated and move west (downstream) towards Seal Bend until the end of construction.

Negligible Impact and Small Numbers Analysis and Preliminary Determination

The regulations implementing the MMPA found at 50 CFR 216.103 define "negligible impact" as: An impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival. In making a negligible impact determination, NMFS considers a variety of factors, including but not limited to: (1) The number of anticipated mortalities (none of which would be authorized here); (2) the number and nature of anticipated injuries (none of which would be authorized here); and (3) the number, nature, and duration of Level B harassment, and the context in which the takes occur (*e.g.,* will the takes occur in an area or time of significance for harbor seals, are takes occurring to a small, localized population?).

As described above, harbor seals would not be exposed to activities or sound levels which would result in injury (*e.g.,* PTS), serious injury, or mortality. Takes will be limited to Level B behavioral harassment. Pile driving would take place in the relatively shallow estuarine waters of Elkhorn Slough and affect harbor seals that belong to a stock that occurs throughout California. Although two harbor seal haul-outs are located within 300–400 ft of the action area (waters around the Union Pacific Railroad bridge), the Parsons Slough Complex is not considered to be an important habitat for harbor seals compared to other sites in the area (*e.g.* Seal Bend). NMFS has preliminarily determined that no injuries or mortalities are anticipated to occur as a result of the proposed action, and none are proposed to be authorized. In addition, harbor seals in the area are not expected to incur hearing impairment (*i.e.,* TTS or PTS) or non-auditory physiological effects. Although it is possible for some individual harbor seals to be exposed to sounds from pile driving activities more than once, the extent of these multi-exposures are expected to be limited by the constant movement of harbor seals in and out of Elkhorn Slough and the timing of in-water construction to coincide with periods when the animals are less likely to be present.

As previously mentioned Pacific harbor seals are not listed as depleted under the MMPA or threatened or endangered under the Endangered Species Act (ESA). Although populations of Pacific harbor seals were greatly depleted by the end of the 19th century due to commercial hunting, the population has increased dramatically during the last half of the 20th century and appears to be stabilizing at what may be their carrying capacity (Caretta *et al.,* 2009). The amount of take the NOAA Restoration Center, Southwest Region, has requested, and NMFS proposes to authorize is considered small (less than 6 percent) relative to the estimated population of 34,233 Pacific harbor seals.

Pacific harbor seals may be temporarily impacted by pile driving noise. However, these animals are expected to avoid the area, thereby reducing exposure and impacts. In addition, although the sill project is expected to take 11 to 15 weeks to complete, the installation of end-bearing piles and sheet pile would only occur for approximately 20 days. Further, the Union Pacific Railroad bridge that is located in the vicinity of the project site has approximately 15–20 trains passing over it each day and harbor seals haul-out on the mud flats located on either side of the bridge. As mentioned earlier, during a previous project at this site involving pile driving, harbor seals were observed to be present during construction and reportedly entered and exited the area without any visible signs of stress or undue harassment (MACTEC Engineering and Consulting 2003). Therefore, animals are likely tolerant or habituated to anthropogenic disturbance, including pile driving. Finally, breeding and pupping occur outside of the proposed work window; therefore, no disruption to reproductive behavior is anticipated. There is no anticipated effect on annual rates of recruitment or survival of the affect harbor seal population.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS preliminarily determines that the Parsons Slough sill project will result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking from the Parsons Slough project will have a negligible impact on the affected species or stocks.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action.

Endangered Species Act (ESA)

No ESA-listed species under NMFS' jurisdiction are expected to be affected by these activities. Therefore, NMFS has determined that a section 7 consultation for issuance of the proposed IHA under the ESA is not required.

National Environmental Policy Act (NEPA)

Pursuant to NEPA, the general impacts associated with the design and construction phases of the proposed action are described in the Community-Based Restoration Program (CRP) Programmatic Environmental Assessment (PEA) and the Supplemental Programmatic Environmental Assessment (SPEA), which were prepared by the NOAA Restoration Center, Southwest Region. The NOAA Restoration Center, Southwest Region, will complete a Targeted Supplemental Environmental Assessment (TSEA) to include all project-specific impacts not described in the CRP PEA/SPEA. If it is adequate, NMFS will consider adopting it. If not, NMFS would prepare an independent EA. A copy of NOAA's EA can be obtained by going to the NMFS Web site listed in the beginning of this document. This analysis will be completed prior to the issuance or denial of this proposed IHA. The public is invited to provide comments on the potential effects to marine mammals disclosed in this notice as well as NOAA's EA. NMFS will consider public comments as it completes its NEPA analysis and decides whether or not to prepare a Finding of No Significant Impact should NMFS decide to issue a final IHA.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to authorize the take of marine mammals incidental to the Parsons Slough project, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: September 29, 2010.

Helen M. Golde,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–24986 Filed 10–4–10; 8:45 am]

BILLING CODE 3510–22–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Wednesday, October 6, 2010; 10 a.m.–11 a.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

Matter To Be Considered

Compliance Status Report

The Commission staff will brief the Commission on the status of compliance matters. For a recorded message containing the latest agenda information, call (301) 504–7948.

FOR MORE INFORMATION CONTACT: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: September 29, 2010.

Todd A. Stevenson,

Secretary.

[FR Doc. 2010–25174 Filed 10–1–10; 4:15 pm]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 10–47, 10–48, and 10–51]

36(b)(1) Arms Sales Notifications

AGENCY: Defense Security Cooperation Agency, DoD.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of three section 36(b)(1) arms sales notifications to fulfill the requirements of section 155 of Public Law 104–164, dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

SUPPLEMENTARY INFORMATION: The following are copies of letters to the Speaker of the House of Representatives, Transmittals 10–20, 10–23, and 10–42 with associated attachments.

Dated: September 29, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Transmittal No. 10–47

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 10–47 with attached transmittal and policy justification.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

SEP 24 2010

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 10-47 , concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Iraq for defense articles and services estimated to cost $57 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Richard A. Genaille, Jr.

Richard A. Genaille, Jr.
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Regional Balance (Classified Document Provided Under Separate Cover)

Transmittal No. 10-47

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Iraq

(ii) Total Estimated Value:

Major Defense Equipment*	$ 0 million
Other	$ 57 million
TOTAL	$ 57 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: Contractor technical support for the development and modification of Mobile Communications Centers that includes the design, supply and installation of all communication equipment. Also included are warranties, spare and repair parts, support equipment, publications and technical data, personnel training and training equipment, contractor engineering and technical support services, and other related elements of logistics support.

(iv) Military Department: Army (UDD)

(v) Prior Related Cases, if any: None

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: None

(viii) Date Report Delivered to Congress: 24 September 2010

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Iraq – Contractor Technical Support for the Mobile Communications Center

The Government of Iraq has requested a possible sale of contractor technical support for the development and modification of Mobile Communications Centers that includes the design, supply and installation of all communication equipment. Also included are warranties, spare and repair parts, support equipment, publications and technical data, personnel training and training equipment, contractor engineering and technical support services, and other related elements of logistics support. The estimated cost is $57 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country. This proposed sale directly supports the Iraq government and serves the interests of the Iraqi people and the U.S.

The proposed sale of the communication equipment will advance Iraq's efforts to develop a strong national policy authority and military. The communications equipment will provide Iraq with spares, training, and technical support for its existing communications network. This will enable the Government of Iraq to assume the missions currently accomplished by U.S. and coalition forces and to sustain itself in its efforts to bring stability to Iraq.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractors will be ITT Corporation, Defense Electronics Services in McLean, Virginia, and the Harris Corporation in White Plains, New York. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require multiple U.S. contractor field service representatives to be stationed in country for a period of approximately three years.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 10–48

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 10–48 with attached transmittal and policy justification.

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

SEP 24 2010

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 10-48 , concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Iraq for defense articles and services estimated to cost $98 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Richard A. Genaille, Jr.

Richard A. Genaille, Jr.
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Regional Balance (Classified Document Provided Under Separate Cover)

Transmittal No. 10-48

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Iraq

(ii) Total Estimated Value:

Major Defense Equipment*	$ 0 million
Other	$ 98 million
TOTAL	$ 98 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: Contractor technical support for the development and maintenance of the Iraqi Defense Network. Also included are hardware and software, warranties, spare and repair parts, support equipment, publications and technical data, personnel training and training equipment, contractor engineering and technical support services, and other related elements of logistics support.

(iv) Military Department: Army (AAP)

(v) Prior Related Cases, if any: None

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: None

(viii) Date Report Delivered to Congress: 24 September 2010

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Iraq – Contractor Technical Support for Iraqi Defense Network

The Government of Iraq has requested a possible sale of contractor technical support for the development and maintenance of the Iraqi Defense Network. Also included are hardware and software, warranties, spare and repair parts, support equipment, publications and technical data, personnel training and training equipment, contractor engineering and technical support services, and other related elements of logistics support. The estimated cost is $98 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country. This proposed sale directly supports the Iraq government and serves the interests of the Iraqi people and the U.S.

This proposed sale of technical support, network upgrades, training, and equipment will advance Iraq's efforts to develop a strong and dedicated military. The support and materials offered will provide Iraq with continued operational capability of their defense network. This will enable the Government of Iraq to assume the missions currently accomplished by U.S. and coalition forces and to sustain itself in its efforts to establish stability to Iraq.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractors will be ITT Corporation, Defense Electronics Services in McLean, Virginia, and the Harris Corporation in White Plains, New York. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require multiple U.S. contractor field service representatives to be stationed in country for a period of approximately three years.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 10–51

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 10–51 with attached transmittal, policy justification, and sensitivity of technology.

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

SEP 2 4 2010

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 10-51, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Kuwait for defense articles and services estimated to cost $693 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Richard A. Genaille, Jr.

Richard A. Genaille, Jr.
Acting Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified Document Provided under Separate Cover)

Transmittal No. 10-51

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Kuwait

(ii) Total Estimated Value:

Major Defense Equipment*	$383 million
Other	$310 million
TOTAL	$693 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: one Boeing C-17 GLOBEMASTER III aircraft, four Turbofan F117-PW-100 engines installed on the aircraft, one spare Turbofan F117-PW-100 engine, one AN/ALE-47 Counter-Measures Dispensing System (CMDS), one AN/AAR-47 Missile Warning System, aircraft ferry services, refueling support, precision navigation equipment, spare and repairs parts, support, personnel training and training equipment, publications and technical data, U.S. Government and contractor engineering, technical, and logistics support services, and other related elements of logistics support.

(iv) Military Department: Air Force (SAA)

(v) Prior Related Cases, if any: None

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vii) Sensitivity of Technology Contained in the Defense Articles or Defense Services Proposed to be Sold: See Annex attached

(viii) Date Report Delivered to Congress: 24 September 2010

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Kuwait – C-17 GLOBEMASTER III Aircraft and Related Support

The Government of Kuwait has requested a possible sale of one Boeing C-17 GLOBEMASTER III aircraft, four Turbofan F117-PW-100 engines installed on the aircraft, one spare Turbofan F117-PW-100 engine, one AN/ALE-47 Counter-Measures Dispensing System (CMDS), one AN/AAR-47 Missile Warning System, aircraft ferry services, refueling support, precision navigation equipment, spare and repairs parts, support, personnel training and training equipment, publications and technical data, U.S. Government and contractor engineering, technical, and logistics support services, and other related elements of logistics support. The estimated cost is $693 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a Major Non-NATO ally which has been, and continues to be, an important force for political stability and economic progress in the Middle East.

This proposed sale will provide a long-range, strategic airlift capability to the Kuwaiti Air Force (KAF) allowing them to meet operational requirements. The KAF is tasked with relief support, humanitarian disaster and peacekeeping missions, as well as transporting dignitaries and cultural assets to various regional and international destinations. This proposed sale will further enhance its interoperability with the U.S. Air Force airlift system in the region. Kuwait will have no difficulty absorbing this aircraft into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

This prime contractor will be The Boeing Company in Chicago, Illinois. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of additional U.S. Government or contractor representatives to Kuwait. The number required will be determined in joint negotiations as the program proceeds through the development, production, and equipment installation phases.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 10-51

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The Boeing C-17 GLOBEMASTER III military airlift aircraft is the newest, most flexible cargo aircraft to enter the U. S. Air Force fleet. The C-17 is capable of rapid strategic delivery of up to 170,900 pounds of personnel and equipment to main operating bases or to forward operating bases. The aircraft is also capable of short field landings with a full cargo load. Finally, the aircraft can perform tactical airlift and airdrop missions and can also transport litters and ambulatory patients during aeromedical evacuation when required. A fully integrated electronic cockpit and advanced cargo systems allow a crew of three: the pilot, copilot and loadmaster to operate the aircraft on any type of mission.

2. The AN/ALE-47 Counter-Measures Dispensing System (CMDS) is an integrated, threat-adaptive, software-programmable dispensing system capable of dispensing chaff, flares and active radio frequency expendables. The threats countered by the CMDS include radar-directed anti-aircraft artillery (AAA), radar command-guided missiles, radar homing guided missiles, and infrared (IR) guided missiles. The system is internally mounted and may be operated as a stand-alone system or may be integrated with other on-board electronic warfare and avionics systems. The AN/ALE-47 uses threat data received over the aircraft interfaces to assess the threat situation and to determine a response. Expendable routines tailored to the immediate aircraft and threat environment may be dispensed using one of four operational modes. The hardware, technical data, and documentation to be provided are Unclassified.

3. The AN/AAR-47 Missile Warning System is a small, lightweight, passive, electro-optic, threat warning device used to detect surface-to-air missiles fired at helicopters and low-flying fixed-wing aircraft and automatically provide countermeasures, as well as audio and visual-sector warning messages to the aircrew. The basic system consists of multiple Optical Sensor Converter (OSC) units, a Computer Processor (CP) and a Control Indicator (CI). The set of OSC units, which normally consist of four, is mounted on the aircraft exterior to provide omnidirectional protection. The OSC detects the rocket plume of missiles and sends appropriate signals to the CP for processing. The CP analyzes the data from each OSC and automatically deploys the appropriate countermeasures. The CP also contains comprehensive BIT circuitry. The CI displays the incoming direction of the threat, so that the pilot can take appropriate action. The hardware, technical data, and documentation to be provided are Unclassified.

4. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 2010–24843 Filed 10–4–10; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2010–OS–0137]

Privacy Act of 1974; System of Records

AGENCY: Defense Finance and Accounting Service; DoD.

ACTION: Notice to add a system of records.

SUMMARY: The Defense Finance and Accounting Service (DFAS) is proposing to add a system of records notice to its inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on November 4, 2010, unless comments are received that would result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, Room 3C843 Pentagon, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory Outlaw (317) 510–4591.

SUPPLEMENTARY INFORMATION: The Defense Finance and Accounting Service notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the FOIA/PA Program Manager, Corporate Communications, Defense Finance and Accounting Service, DFAS–HKC/IN, 8899 E. 56th Avenue, Indianapolis, IN 46249–0150.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on September 21, 2010, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996; 61 FR 6427).

Dated: September 29, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

T7205b

SYSTEM NAME:

Standard Finance System (STANFINS).

SYSTEM LOCATION:

Defense Information Systems Agency, Defense Enterprise Computing Center, St. Louis, MO 63120–1703.

Defense Finance and Accounting Service, Indianapolis, IN 46249–2700.

Defense Finance Accounting Service, Columbus, OH 43218–2317.

Defense Finance and Accounting Service, Rome, NY 13441–4527.

Defense Finance and Accounting Service, Japan, Bldg 104, Unit 5220, APO AP 96328–5220.

For a list of other DoD sites utilizing the system contact the Standard Finance System, System Manager, Defense Finance and Accounting Service—Indianapolis, Information Technology Directorate, 8899 East 56th Street, Indianapolis, IN 46249–2700.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty military members, Army, Army Reserve and National Guard military members and other users of the Defense Commissary Agency.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Social Security Number (SSN), home address and telephone number, military branch of service, military status, and disbursing and accounting transaction data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; Department of Defense Financial Management Regulation (DoDFMR) 7000.14–R, Volume 5; 31 U.S.C. 3511, Prescribing accounting requirements and developing accounting systems; 31 U.S.C. 3512, Executive agency accounting and other financial management reports and plans; 31 U.S.C. 3513, Finance Reporting and Accounting System; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

Provides comprehensive accounting support and effective General Ledger control over all resources. The system processes obligations, accruals, disbursements and collections utilizing interfaces and data entry and will be used the system for processing these accounting transactions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' published at the beginning of the DFAS compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

By name and Social Security Number (SSN).

SAFEGUARDS:

Records are maintained in a controlled facility. Physical entry is restricted by the use of locks, guards, and is accessible only to authorized personnel. Access to records is limited to person(s) responsible for servicing the record in performance of their official duties and who are properly screened and cleared for need-to-know. Access to computerized data is restricted by passwords, which are changed according to agency security policy.

RETENTION AND DISPOSAL:

Cut off at end of fiscal year. Destroy 6 years, 3 months after the later of either closure of appropriate account or liquidation of all obligations in the closed account.

Records are disposed of by degaussing, burning, tearing, recycling, melting, chemical decomposition, pulping, pulverizing, shredding, mutilation, overwriting, and incineration.

SYSTEM MANAGER(S) AND ADDRESS:

Defense Finance and Accounting Service, Information and Technology Services, 8899 East 56th Street, Indianapolis, IN 46249–2700.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this record system should address written inquiries to the Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications, 8899 East 56th Street, Indianapolis, IN 46249–0150.

Individuals should furnish full name, Social Security Number (SSN), current address and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications, 8899 East 56th Street, Indianapolis, IN 46249–0150.

Individuals should furnish full name, Social Security Number (SSN), current address and telephone number.

CONTESTING RECORD PROCEDURES:

The DFAS rules for accessing records, for contesting contents and appealing initial agency determinations are published in DFAS Regulation 5400.11–R; 32 CFR part 324; or may be obtained from Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications, 8899 East 56th Street, Indianapolis, IN 46249–0150.

RECORD SOURCE CATEGORIES:

Individual or DoD military component.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–24844 Filed 10–4–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Prepare an Environmental Impact Statement for Military Training Activities at the Naval Weapons Systems Training Facility Boardman, OR, and To Announce Public Scoping Meetings

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, as implemented by the Council on Environmental Quality regulations (40 CFR Parts 1500–1508), the Department of the Navy (DoN) announces its intent to prepare an Environmental Impact Statement (EIS) to evaluate the potential environmental effects of continuing training activities on and increasing usage of the Naval Weapons Systems Training Facility (NWSTF) Boardman, Oregon.

DATES AND ADDRESSES: Two public scoping meetings will be held to receive oral and/or written comments on environmental concerns that should be addressed in the EIS. The public scoping meetings will be held on the following dates and times, and at the following locations:

1. Wednesday, October 27, 2010, 5 p.m.–8 p.m., at Port of Morrow Conference Center, Riverfront Room, 2 Marine Drive, Boardman, OR 97818;

2. Thursday, October 28, 2010, 5 p.m.–8 p.m., at Hermiston Conference Center, Rotary Room, 415 S. Highway 395, Hermiston, OR 97838.

Each scoping meeting will consist of an informal, open house session with information stations staffed by DoN and National Guard representatives. Details of the meeting locations and times will be announced in local newspapers. Additional information concerning meeting times will be available on the EIS Web page located at: *http://www.NWSTFBoardmanEIS.com*.

FOR FURTHER INFORMATION CONTACT: Mrs. Amy Burt, Naval Facilities Engineering Command, Northwest, 1101 Tautog Circle, Suite 203, Silverdale, Washington 98315–1101, Attn: NWSTF Boardman Project Manager, Code EV1.AB.

SUPPLEMENTARY INFORMATION: The DoN's proposed action includes range enhancements and changes to training activities, capacities, and facilities as they currently exist on NWSTF Boardman. The Proposed Action would result in selectively focused but critical range enhancements and increases in DoN and Oregon National Guard training that are necessary to ensure NWSTF Boardman supports military training and readiness objectives.

The overall strategic mission of NWSTF Boardman is to support naval and joint services operational readiness by providing a suitable range within the geographical vicinity for Commander, U.S. Pacific Fleet and Oregon National Guard forces in the northwest.

The EIS study area consists of NWSTF Boardman airspace, Military Operating Area and Restricted Airspace totaling approximately 500 square miles, and 47,432 acres of land within the boundaries of NWSTF Boardman. NWSTF Boardman is rectangular shaped oriented from north to south, approximately 6 miles by 12 miles in size, and is situated 2.5 miles south of the town of Boardman and the Columbia River, and southwest of Umatilla, Oregon.

The purpose of the Proposed Action is to: (1) Ensure that NWSTF Boardman continues to support critical military training activities in a realistic and cost-effective manner; (2) Achieve and maintain military readiness using NWSTF Boardman to support and conduct current, emerging, and future training and research, development, test and evaluation (RDT&E) activities; and (3) Upgrade and modernize NWSTF Boardman's existing capabilities to address shortfalls in available training range capabilities in the Pacific Northwest.

The Proposed Action is needed to provide a training environment consisting of range areas, facilities and instrumentation with the capacity and capabilities to fully support required training tasks for military units. In this regard, NWSTF Boardman furthers the military's execution of its roles and responsibilities under United States Code (U.S.C.) Title 10 (federal military) and U.S.C. Title 32 (State National Guard). To comply with its Title 10 and 32 mandates, the military needs to maintain current levels of military readiness by improving training at NWSTF Boardman, accommodate possible future increases in operational training and force structure changes, and maintain the long-term viability of NWSTF Boardman as a military training and testing area.

Under the No Action Alternative, training activities and major range events would continue at current levels. The DoN and National Guard training activities currently conducted on NWSTF Boardman, presented as the No Action Alternative, have been ongoing at present levels and frequencies for approximately 10 years.

Under Alternative 1, NWSTF Boardman would support an increase in training activities to include force structure changes associated with the introduction of new weapon systems, vehicles, and aircraft, in addition to accommodating training activities currently conducted on the range. Alternative 1 would also include the implementation of range enhancements to allow NWSTF Boardman to comply with DoN and National Guard requirements to enable military personnel to qualify on weapon systems. These required range enhancements could include the construction of a Multi-Purpose Machine Gun Range, a Digital Multi-Purpose Training Range, a Convoy Live Fire training range, a Demolition Training Range, construction of a joint range administration/Unmanned Aerial System (UAS) maintenance building, UAS landing strip, and the opening of a second target area for air to ground bombing exercises.

Alternative 2 consists of all elements of Alternative 1 plus the addition of a third target area, a helicopter landing zone, a second Convoy Live Fire range, four mortar pads, and a separate joint-use administrative facility. Alternative 2 also includes an increase in training activities associated with these additional range enhancements.

Environmental issues that will be addressed in the EIS, as applicable, include but are not limited to the following: Air quality, airspace, biological resources, including threatened and endangered species, cultural resources, water resources, geology and soils, hazardous materials and waste, health and safety, noise, socioeconomics, and transportation.

The DoN is initiating the scoping process to identify community concerns and local issues that will be addressed in the EIS. Federal, state and local agencies, Federally Recognized Native American Tribes, the public, and all interested persons are encouraged to provide oral, written, or electronic comments to the DoN to identify specific environmental issues or topics of environmental concern that the commenter believes the DoN should consider. All comments, electronic,

written or provided orally at the scoping meetings, will receive the same consideration during EIS preparation.

Written comments on the scope of the EIS should be postmarked no later than November 15, 2010. Comments may be mailed to Mrs. Amy Burt, Naval Facilities Engineering Command, Northwest, 1101 Tautog Circle Suite, 203, Silverdale, Washington 98315–1101, *Attn:* NWSTF Boardman EIS Project Manager, Code EV1.AB. Comments may also be submitted on the project Web site, *http://www.NWSTFBoardmanEIS.com*.

Dated: September 29, 2010.

D.J. Werner,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2010–24910 Filed 10–4–10; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID USA–2010–0021]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army; DoD.

ACTION: Notice to add a system of records.

SUMMARY: The Department of the Army proposes to add a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will become effective without further notice on November 4, 2010, unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

* *Mail:* Federal Docket Management System Office, Room 3C843 Pentagon, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Leroy Jones at (703) 428–6185.

SUPPLEMENTARY INFORMATION: The Department of the Army notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the Department of the Army, Privacy Office, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on September 22, 2010, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996; 61 FR 6427).

Dated: September 29, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0036–2 USAAA

SYSTEM NAME:

Army Audit Agency System for Information Storage

SYSTEM LOCATION:

U.S. Army Audit Agency, 3101 Park Center Drive, Alexandria, VA 22302–1596.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current, former military, and civilian employees of the U.S. Army Audit Agency.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee information; name, Social Security Number (SSN), date of birth, place of birth, military status, security clearance, leave, overtime/comp time, work schedules, positions and locations; rating chain; training history, educational degree level to include Continuing Professional Education (CPE), home and work phone numbers, and home and work addresses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; DoD 7600.07–M, DoD Audit Manual; DoD Financial Management Regulation Volume 8: Civilian Pay Policy and Procedures; Army Regulation 36–2, Audit Services in the Department of the Army; Army Regulation 380–67, The Department of the Army Personnel Security Program; E.O. 9397 (SSN), as amended.

PURPOSE(S):

The Army Audit Agency System for Information Storage (AAAsist) streamlines the audit process, reduces the amount of paperwork and/or e-mail required to manage the audit process. This system will provide project management, track staffing information, provide Activity Based Costing (ABC) Reporting, and agency business process management.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Retrieved by a name or educational degree level.

SAFEGUARDS:

Physical access is restricted to authorized personnel with a serialized key-card. Physical access to the database servers are maintained and restricted to authorized personnel only and protected by a cipher lock. User accounts to access the database servers are limited to personnel on a "need-to-know" basis. Access to through the user web interface is restricted to authorized personnel with a valid and active user account, password and Common Access Card (CAC). Passwords are changed periodically.

RETENTION AND DISPOSAL:

Project Management records are disposed of by shredding, burning, or erasing from system three years after the last recommendation is implemented.

SYSTEM MANAGER(S) AND ADDRESS:

The Auditor General, U.S. Army Audit Agency, 3101 Park Center Dr., Alexandria, VA 22302–1596.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves

is contained in this system should address written inquiries to The Office of General Counsel, U.S. Army Audit Agency, 3101 Park Center Dr., Alexandria, VA 22302–1596.

All written inquiries should provide the full name, Social Security Number (SSN), date of birth, military status and current mailing address and any details which may assist in locating records, and their signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United State of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to The Office of General Counsel, U.S. Army Audit Agency, 3101 Park Center Dr., Alexandria, VA 22302–1596.

All written inquiries should provide the full name, Social Security Number (SSN), date of birth, military status and current mailing address and any details which may assist in locating record, and their signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United State of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 25–71; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual and the individual's official personnel file.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–24845 Filed 10–4–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Electricity Advisory Committee

AGENCY: Department of Energy, Office of Electricity Delivery and Energy Reliability.

ACTION: Notice of open meeting.

SUMMARY: This notice announces the open meeting of the re-established DOE Electricity Advisory Committee. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) (5 U.S.C. App.), as amended, requires that public notice of these meetings be announced in the **Federal Register.**

DATES: Friday, October 29, 2010, 8 a.m.–3 p.m. EDT.

ADDRESSES: National Rural Electric Cooperative Association, 4301 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: David Meyer, Designated Federal Officer, Office of Electricity Delivery and Energy Reliability, U.S. Department of Energy, Forrestal Building, Room 8G–024, 1000 Independence Avenue, SW., Washington, DC 20585; *Telephone:* (202) 586–8118 or *E-mail: David.Meyer@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Electricity Advisory Committee (EAC) was re-established in July 2010 to provide advice to the Department on implementing the Energy Policy Act of 2005 (Pub. L 109–58) and the Energy Independence and Security Act of 2007 (Pub. L. 110–140), as well as on modernizing the nation's electricity delivery infrastructure. The Committee is composed of 27 individuals of diverse backgrounds selected for their technical expertise and experience, established records of distinguished professional service, and knowledge of issues that pertain to electricity.

Purpose of the Meeting

The meeting of the re-established Electricity Advisory Committee is expected to include introduction of Committee Members, discussion of the 2010–2011 objectives of the Committee, and a discussion of whether to establish subcommittees on specific subjects.

Tentative Agenda

The principal business item on the agenda will be to begin the Committee's consideration and selection of study topics related to electricity delivery that it will focus on over the coming 12–24 months.

The meeting agenda may change to accommodate Committee business. For Committee agenda updates, *see* the Committee Web site at: *http://www.oe.energy.gov/eac.htm.*

Public Participation

The meeting is open to the public. Any member of the public interested in offering comments at the EAC meeting may do so on the day of the meeting, Friday, October 29, 2010. Approximately one-half hour will be reserved for public comments. Time allotted per speaker will depend partly on the number who wish to speak but is not expected to exceed three minutes. Anyone who is not able to attend the meeting or who has not had sufficient time to address the EAC is invited to send a written statement to Mr. David Meyer (*see* **ADDRESSES**). Such statements will then be circulated to the EAC. The following electronic file formats are acceptable: Microsoft Word (.doc), Corel Word Perfect (.wpd), Adobe Acrobat (.pdf), Rich Text Format (.rtf), plain text (.txt), Microsoft Excel (.xls), and Microsoft PowerPoint (.ppt). If you submit information that you believe to be exempt by law from public disclosure, you must submit one complete copy, as well as one copy from which the information claimed to be exempt by law from public disclosure has been deleted. DOE is responsible for the final determination concerning disclosure or nondisclosure of the information and for treating it in accordance with the DOE's Freedom of Information regulations (10 CFR 1004.11).

Note: Delivery of the U.S. Postal Service mail to DOE continues to be delayed by several weeks due to security screening. DOE therefore encourages those wishing to comment to submit comments electronically by e-mail. If comments are submitted by regular mail, the Department requests that they be accompanied by a CD or diskette containing electronic files of the submission.

Minutes

The minutes of the first meeting of the EAC are expected to be available within 45 days of the meeting on the Committee Web site at *http://www.oe.energy.gov/eac.htm* or by contacting Mr. David Meyer (see **ADDRESSES**).

Issued in Washington, DC, on September 29, 2010.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2010–24908 Filed 10–4–10; 8:45 am]

BILLING CODE 6405–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC10–582–001]

Commission Information Collection Activities (FERC–582); Comment Request; Submitted for OMB Review

September 29, 2010.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission or FERC) has submitted the information collection described below to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission issued a Notice in the **Federal Register** (75 FR 44781, 07/29/2010) requesting public comments. FERC received comments from one commenter and has made this notation in its submission to OMB.

DATES: Comments on the collection of information are due by November 4, 2010.

ADDRESSES: Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, c/o *oira_submission@omb.eop.gov* and include OMB Control Number 1902–0132 for reference. The Desk Officer may be reached by telephone at 202–395–4638.

A copy of the comments should also be sent to the Federal Energy Regulatory Commission and should refer to Docket No. IC10–582–001. Comments may be filed either electronically or in paper format. Those persons filing electronically do not need to make a paper filing. Documents filed electronically via the Internet must be prepared in an acceptable filing format and in compliance with the Federal Energy Regulatory Commission submission guidelines. Complete filing instructions and acceptable filing formats are available at *http://www.ferc.gov/help/submission-guide.asp*. To file the document electronically, access the Commission's website and click on Documents & Filing, E-Filing (*http://www.ferc.gov/docs-filing/efiling.asp*), and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments.

For paper filings, the comments should be submitted to the Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426, and should refer to Docket No. IC10–582–001.

Users interested in receiving automatic notification of activity in FERC Docket Number IC10–582–001 may do so through eSubscription at *http://www.ferc.gov/docs-filing/esubscription.asp*. All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the "eLibrary" link. For user assistance, contact *ferconlinesupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by e-mail at *DataClearance@FERC.gov*, by telephone at (202) 502–8663, and by fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION: The information required by FERC–582, "Electric Fees; Annual Charges; Waivers; and Exemptions;" OMB Control No. 1902–0132, covers the filing requirements in the Code of Federal Regulations (CFR) under Title 18, Part 381 [1] and Part 382.[2]

FERC–582 is used by the Commission to implement the statutory provisions of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) which authorizes the Commission to establish fees for its services.[3] In addition, the Omnibus Budget Reconciliation Act of 1986 (OBRA) (42 U.S.C. 7178) authorizes the Commission "to assess and collect fees and annual charges in any fiscal year in amounts equal to all the costs incurred by the Commission in that fiscal year."

In calculating electric fees and annual charges, the Commission first determines the total costs of its electric regulatory program and then subtracts all electric regulatory program filing fee collections to determine the total collectible electric regulatory program costs. The data submitted under FERC–582 [4] is used to determine the annual charge levied on each utility and is based on the total megawatt-hours (MWh) of transmission of electric energy in interstate commerce. This is measured by the sum of the MWh of all unbundled transmission (including MWh delivered in wheeling transactions and MWh delivered in exchange transactions) and the MWh of all bundled wholesale power sales (to the extent these later MWh were not separately reported as unbundled transmission).

Public utilities and power marketers subject to these annual charges must submit FERC–582 data to the Commission by April 30 of each year (18 CFR 382.201). The Commission issues bills for annual charges, and public utilities and power marketers then must pay the charges within 45 days of the Commission's issuance of the bill.

Requests for waivers and exemptions of fees and charges (required by 18 CFR Parts 381 and 382) are filed, based on need. The Commission's staff uses the filer's financial information to evaluate the request for a waiver or exemption of the obligation to pay a fee or an annual charge.

Public Comment and FERC response. Following is a summary of the comment filed by the public on FERC–582

[1] Title 18 CFR, Sections 381.105, 381.106, 381.108, 381.302, and 381.305.

[2] Title 18 CFR, Sections 382.102, 382.103, 382.105, 382.106, and 382.201.

[3] The most recent "Annual Update of Filing Fees" was issued on 1/20/2010 and is posted at *http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=12249237*. Other reporting requirements, associated with the estimation of annual charges or filing fees, are separate from the FERC–582 and not a subject of Docket Number IC10–582 or the FERC–582 clearance request. They are approved separately by OMB and include: (a) FERC–583 ("Annual Kilowatt Generating Report (Annual Charges)," OMB Control Number 1902–0136) for hydropower generation facilities; (b) FERC Form No. 2 (Major Natural Gas Pipeline Annual Report, OMB Control Number 1902–0028), FERC Form No. 2A (Non-Major Natural Gas Pipeline Annual Report, OMB Control Number 1902–0030), and FERC Form No. 6 (Annual Report of Oil Pipeline Companies, OMB Control Number 1902–0022) for estimating charges for natural gas and oil pipelines; and (c) FERC–587 (Land Description: Public Land States/Non-Public Land States (Rectangular or Non Rectangular Survey System Lands in Public Land States); OMB Control Number 1902–0145) for estimating fees associated with the use of Federal lands.

[4] FERC–582 Annual Charges Reports are available in FERC's eLibrary system (at *http://www.ferc.gov/docs-filing/elibrary.asp*), by searching under the document class and type of "Report/Form/Annual Charges Report."

reporting requirements, and FERC's response. For a more detailed explanation please see the Commission's submission to OMB at *http://www.reginfo.gov/public/do/PRAMain*, scroll to "Currently under Review", key in "Federal Energy Regulatory Commission" and scroll to 1902–0132, "Electric Fees; Annual Charges; Waivers; and Exemptions;" (FERC–582).

General Comment Regarding Annual Fees and Charges: The commenter believes that the annual fees and charges levied on jurisdictional companies do not fully reflect the level of service provided to such companies. The commenter further indicates that the taxpayers are bearing the costs that corporate executives should be paying.

FERC's Response: Congress has directed the Commission to collect fees and annual charges equal to its expenses, and the Commission, in fact, collects fees and annual charges equal to its expenses. The Commission deposits the fees and annual charges that it collects with the Treasury. Therefore, the Commission is carrying out its statutory mandate, that is, the Commission is collecting the amount that Congress has directed that it collect.

Action: The Commission is requesting a three-year extension of FERC–582 reporting requirements, with no change.

Burden statement: The estimated annual burden figures and costs follow.

Information collection	No. of respondents (1)	Average No. of reponses per respondent (2)	Average burden hours per response (3)	Total burden hours (1)×(2)×(3)
FERC–582 [1,2] (except 381.302, below)	73	1	3	219
Exemption/waiver of fee for declaratory order (under 381.302)	6	1	2	12
Total				231

The total estimated annual cost burden to respondents is $15,312 (231 hours/2080 hours [5] per year, times $137,874 [6]).

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden of the proposed collections 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 collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–24973 Filed 10–4–10; 8:45 am]

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[5] An employee works an estimated 2,080 hours per year.

[6] The estimated average annual cost per employee is $137,874.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1390–063]

Southern California Edison Company; Notice of Application for Amendment of License, and Soliciting Comments, Motions To Intervene, and Protests

September 28, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Non-Capacity Amendment of License.

b. *Project No.:* 1390–063.

c. *Date Filed:* August 18, 2010.

d. *Applicant:* Southern California Edison (SCE) Company.

e. *Name of Project:* Lundy Project.

f. *Location:* The project is located on Mill Creek in Mono County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mrs. Kelly O'Donnell, SCE Law Department, 2244 Walnut Grove Ave., P.O. Box 800, Rosemead, CA 91770, (626) 302–4411, *Kelly.Odonnell@sce.com.*

i. *FERC Contact:* Any questions regarding this notice should be directed to Mr. Jeremy Jessup (202) 502–6779 or *Jeremy.Jessup@ferc.gov.*

j. *Deadline for filing comments, motions to intervene and protest:* October 28, 2010. All documents may be filed electronically via the Internet. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp*. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments.

Please include the project number (P–1390–063) on any comments, motions, or recommendations filed.

k. *Description of Request:* The applicant proposes a new concrete head works at the tailrace of the Lundy Powerhouse. The applicant also proposes to install a high-density polyethylene pipeline, with a capacity of 52 cubic feet per second, within the existing earthen return ditch extending from the Lundy Powerhouse tailrace (near Wilson Creek) back to Mill Creek. The purpose of the applicant's proposal is to provide the means for the applicant to return a portion of the water that has been diverted from Lundy Lake through the Lundy Powerhouse back to Mill Creek below Lundy Lake. The applicant is also requesting a new Article 411–A that requires a plan for engineering, permitting, construction, and operation of the proposed modified powerhouse tailrace diversion structure and Mill Creek return water conveyance facility.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene or protests should relate to project works which are the subject of the license amendment. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–24953 Filed 10–4–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2503–144]

Duke Energy Carolinas, LLC; Notice of Application for Amendment of License, and Soliciting Comments, Motions To Intervene, and Protests

September 27, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Non-Capacity Amendment of License.

b. *Project No.:* 2503–144.

c. *Date Filed:* August 24, 2010.

d. *Applicant:* Duke Energy Carolinas, LLC.

e. *Name of Project:* Keowee-Toxaway Pumped-Storage Project.

f. *Location:* The project is located on the Keowee, Little, Whitewater, Toxaway, Thompson and Horsepasture Rivers, all tributaries of the Savannah River, in Oconee and Pickens Counties, South Carolina and in Transylvania County, North Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Jeffery G. Lineberger, P.E., Duke Energy Carolinas, LLC, 526 South Church Street, P.O. Box 1006, Charlotte, NC 28201, (704) 382–5942, *jeff.lineberger@duke-energy.com/.*

i. *FERC Contact:* Any questions regarding this notice should be directed to Mr. Jeremy Jessup (202) 502–6779 or *Jeremy.Jessup@ferc.gov.*

j. *Deadline for filing comments, motions to intervene and protest:* October 27, 2010.

All documents may be filed electronically via the Internet. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments.

Please include the project number (P–2503–144) on any comments, motions, or recommendations filed.

k. *Description of Request:* The applicant proposes to: (1) Amend portions of the Project's Exhibit M to reflect planned runner replacements and related work for Units 1 and 2 of the Jocassee Pumped Storage Development (Jocassee Development), and (2) amend the authorized installed capacity figures in the license to reflect the replacements and upgrades and the current Commission regulations concerning authorized installed capacity contained in 18 CFR 11.1(i) for both the Keowee Development and the Jocassee Development. The runner replacement work will occur from September 2010 through May 2011. When the proposed work is completed, the revised authorized installed capacity for the Project will be 867.6 MW, consisting of 157.5 MW for the Keowee Development

and 710.1 MW for the Jocassee Development.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) Bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene or protests should relate to project works which are the subject of the license amendment. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–24947 Filed 10–4–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1494–386]

Grand River Dam Authority; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

September 28, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-project use of project lands and waters.

b. *Project No:* 1494–386.

c. *Date Filed:* May 27, 2010, supplemented on August 12 and August 16, 2010.

d. *Applicant:* Grand River Dam Authority.

e. *Name of Project:* Pensacola Hydroelectric Project.

f. *Location:* Grand Lake in Ottawa County, Oklahoma.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Tamara Jahnke, P.O. Box 409, Vinita, Oklahoma 74301. Tel: (918) 256–5545.

i. *FERC Contact:* Mark Carter, Telephone: (678) 245–3083, and e-mail *mark.carter@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* October 28, 2010.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-filing" link. The Commission strongly encourages electronic filings.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–2232–579) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, it must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Application:* The licensee requests Commission approval to grant Ottawa County (permittee) an easement of 1.99 acres of project lands (1.2 acres of which are wetlands) for use as a boat ramp and parking lot at Grand Lake. As mitigation for construction in a wetland, the licensee would place a land use restriction on approximately 6 acres of nearby project land for an aquatic ecosystem preserve.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field (P–2232) to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.as*p to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and

Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–24954 Filed 10–4–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2899–144]

Idaho Power Company and Milner Dam, Inc.; Notice of Application for Amendment of License and Soliciting Comment, Motions To Intervene, and Protests

September 24, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public comment.

a. *Type of Application:* Amendment of License.

b. *Project No.* 2899–144.

c. *Date Filed:* September 9, 2010.

d. *Applicants:* Idaho Power Company and Milner Dam, Inc.

e. *Name of Project:* Milner Hydroelectric Project.

f. *Location:* The project is located on the Snake River in Twin Falls and Cassia Counties, Idaho.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicants Contact:* Rex Blackburn, Senior Vice President and General Counsel, and Nathan F. Gardiner, Idaho Power Company, 1221 West Idaho Street, P.O. Box 70, Boise, Idaho 83707–0070; *telephone:* (208) 388–2713.

i. *FERC Contact:* Any questions on this notice should be addressed to John Mark at (212) 273–5940 or john.mark@ferc.gov.

j. *Deadline for filing comments, motions to intervene, and protests:* October 25, 2010.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/efiling.asp*). Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system (*http://www.ferc.gov/docs-filing/ecomment.asp*) and must include name and contact information at the end of comments. The Commission strongly encourages electronic filings.

All documents (original and seven copies) filed by paper should be sent to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–2899–144) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicants specified in the particular application.

k. *Description of the Application:* The Applicants propose to amend article 415 of the project license to include April as a month when whitewater releases are potentially available at the Milner Project. Specifically, the Applicants request that the first paragraph of article 415 of the license for the Milner Project be amended to read as follows: Upon receiving a whitewater release request by two or more boaters by 3:00 p.m. on Friday before the weekend and after at least two boaters have checked in at the main powerhouse on the day of the whitewater release, the licensees shall not operate the main powerhouse, located 1.6 miles downstream of Milner Dam, for up to 4 weekend days (included is the observed Memorial Day holiday) from 10:00 a.m. to 3:00 p.m. between April 1 and June 30, when inflow to the Milner Project, in excess of irrigation demands, is between 10,000 and 12,500 cfs. Powerhouse operation will resume when inflow in excess of irrigation demand is greater than 12,500 cfs and utilize for generation any flows in excess of 12,500 cfs. The licensees are required by article 417 to provide a communication network used to predict the volume of streamflow that will be available for whitewater boating during April, May, and June.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Pubic Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site using the "eLibrary" link at *http://elibrary.ferc.gov/idmws/search/fercgensearch.asp*. Enter the docket number excluding the last three digits (P–2899) in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSuport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title "COMMENTS", "PROTESTS", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be

obtained by agencies directly from the Applicants. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicants' representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–24979 Filed 10–4–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 5044–015]

Avondale Mills Inc.; Augusta Canal Authority; Notice of Application for Transfer of License, and Soliciting Comments and Motions To Intervene

September 24, 2010.

On September 13, 2010, Avondale Mills Inc. (transferor) and Augusta Canal Authority (transferee) filed an application for transfer of license for the Sibley Mill Project No. 5044, located on the Augusta Canal in the City of Augusta, Richmond County, Georgia.

Applicants seek Commission approval to transfer the license for the Sibley Mill Project from transferor to transferee.

Applicants' Contact: Alan W. Stuart, Kleinschmidt Associates, 204 Caughman Farm Lane, Suite 301, Lexington, SC 20972, (803) 462–5620.

FERC Contact: Kim Carter (202) 502–6486.

Deadline for filing comments and motions to intervene: 30 days from the issuance date of this notice. Comments and motions to intervene may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1) and the instructions on the Commission's Web site under *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original plus seven copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. More information about this project can be viewed or printed on the eLibrary link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P-5044) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–24980 Filed 10–4–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2850–015]

Hampshire Paper Company; Notice of Application Tendered for Filing With the Commission and Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments

September 24, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2850–015.

c. *Date Filed:* June 17, 2010.

d. *Applicant:* Hampshire Paper Company.

e. *Name of Project:* Emeryville Hydroelectric Project.

f. *Location:* On the Oswegatchie River in the hamlet of Emeryville, in St. Lawrence County, New York. The project does not occupy federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Michael McDonald, Facility Manager, Hampshire Paper Company, 1827 County Road 22, Gouverneur, NY 13642; Telephone (315) 287–1990.

i. *FERC Contact:* John Baummer, (202) 502–6837 or *john.baummer@FERC.gov.*

j. This application is not ready for environmental analysis at this time.

k. *The Project Description:* The existing Emeryville Project consists of: (1) A 16.7-foot-high, 185-foot-long, timber and earth fill gravity dam with a 17-foot-long concrete spillway equipped with 2.4-foot-high flashboards and a 4-foot-wide minimum flow rectangular weir with a minimum elevation of 584.2 feet mean sea level (msl); (2) a 35-acre reservoir with a normal water surface elevation of 586.6 feet msl; (3) a 140-foot-long by 30-foot-wide reinforced concrete intake and headrace structure equipped with four headgates and a trashrack with 5-inch spacing; (4) a 60-foot-long by 14-foot-diameter steel penstock leading to; (5) a 67-foot-long by 32-foot concrete powerhouse containing a horizontal axial flow turbine with a maximum hydraulic capacity of 1,470 cubic feet per second and a net head of 32 feet, directly connected to a horizontal generator unit with a rated capacity of 3,481 kilowatts for an estimated average annual generation of 18,400 megawatt-hours; (6) an 80-foot-long, 23-kilovolt transmission line; and (7) appurtenant facilities.

l. *Locations of the Application:* A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Procedural Schedule:*

The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Tendering Notice	September 27, 2010.
Notice of Acceptance/ Notice of Ready for Environmental Analysis.	November 12, 2010.
Filing of recommendations, preliminary terms and conditions, and fishway prescriptions.	January 11, 2011.
Commission issues Non-Draft EA.	May 11, 2011.
Comments on EA	June 10, 2011.
Modified terms and conditions.	August 9, 2011.

o. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–24978 Filed 10–4–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–417–006; CP08–467–001]

Texas Gas Transmission, LLC; Notice of Application

September 28, 2010.

Take notice that on September 22, 2010, Texas Gas Transmission, LLC (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed an application in Docket Nos. CP07–417–006 and CP08–467–001, requesting an amendment to the certificates of public convenience and necessity issued on May 2, 2008 in Docket No. CP07–417–000 and on April 16, 2009 in Docket No. CP08–467–000 pursuant to section 7(c) of the Natural Gas Act and Part 157 of the Commission's Regulations. Specifically, Texas Gas requests authorization to increase the maximum design capacity of its Greenville Lateral to 1,053,000 MMBtu per day, all as more fully set forth in the application. The application is on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any questions regarding this Application should be directed to Kathy D. Fort, Manager of Certificates and Tariffs, Texas Gas Transmission, LLC, 3800 Frederica Street, Owensboro, Kentucky, 42301 or by telephone at 270–688–6825 or fax at 270–688–5871.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, 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: October 19, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–24949 Filed 10–4–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–194–000]

Central New York Oil and Gas Company, LLC; Notice of Availability of the Environmental Assessment for the Proposed North-South Project

September 27, 2010.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the North-South Project proposed by Central New York Oil and Gas Company, LLC (CNYOG) in the above referenced docket. CNYOG requests authorization to construct, operate, and maintain two new compressor stations in Tioga County, New York and Bradford County, Pennsylvania. The project, which is associated with CNYOG's existing Stagecoach Storage Project, would increase the firm natural gas throughout of the existing North and South Laterals to 560 million cubic feet per day and 728 cubic feet per day, respectively.

The EA assesses the potential environmental effects of the

construction and operation of the North-South Project in accordance with the requirements of the National Environmental Policy Act. The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The proposed North-South Project includes the following facilities:

- One new compressor station in Tioga County, New York (the NS1 Compressor Station) with an electric-driven 13,400-horsepower (hp) centrifugal compressor;
- One new compressor station in Bradford County, Pennsylvania (the NS2 Compressor Station) with an electric-driven 15,300-hp centrifugal compressor;
- Two 30-inch-diameter natural gas pipelines, each about 820 feet long, connecting the NS2 Compressor Station with Tennessee Gas Pipeline Company's (TGP) pipeline in Bradford County, Pennsylvania;
- An approximately 1,700-foot-long non-jurisdictional powerline to the NS2 Compressor Station;
- A 15,000-foot-long non-jurisdictional powerline and an electric substation to supply the NS1 Compressor Station; and
- Expansion of existing metering facilities at the interconnects between CNYOG's North and South Laterals and Millennium Pipeline Company's and TGP's pipelines, respectively.

The EA has been placed in the public files of the FERC and is available for public viewing on the FERC's Web site at *http://www.ferc.gov* using the eLibrary link. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Copies of the EA have been mailed to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; newspapers and libraries in the project area; and parties to this proceeding.

Any person wishing to comment on the EA may do so. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are properly recorded and considered prior to a Commission decision on the proposal, it is important that the FERC receives your comments in Washington, DC on or before October 27, 2010.

For your convenience, there are three methods you can use to submit your comments to the Commission. In all instances, please reference the project docket number (CP10–194–000) with your submission. The Commission encourages electronic filing of comments and has dedicated eFiling expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You may file your comments electronically by using the eComment feature, which is located on the Commission's Web site at *http://www.ferc.gov* under the link to Documents and Filings. An eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments electronically by using the eFiling feature, which is located on the Commission's Web site at *http://www.ferc.gov* under the link to Documents and Filings. With eFiling you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "eRegister." You will be asked to select the type of filing you are making. A comment on a particular project is considered a "Comment on a Filing"; or

(3) You may file a paper copy of your comments at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.

Although your comments will be considered by the Commission, simply filing comments will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC or on the FERC Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number excluding the last three digits in the Docket Number field (i.e., CP10–194). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–24944 Filed 10–4–10; 8:45 am]

BILLING CODE 6717–01–P

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR10–29–002]

Enbridge Pipelines (North Texas) L.P.; Notice of Baseline Filing

September 29, 2010.

Take notice that on September 27, 2010, Enbridge Pipelines (North Texas) L.P. submitted a revised baseline filing of its Statement of Operating Conditions for services provided under section 311 of the Natural Gas Policy Act of 1978 (NGPA).

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or

motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 13, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–24974 Filed 10–4–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR10–114–000; Docket No. PR10–117–000; Docket No. PR10–118–000; Docket No. PR10–119–000; Docket No. PR10–120–000; Docket No. PR10–121–000; Docket No. PR10–122–000 (Not Consolidated)]

The Narragansett Electric Company; Arcadia Gas Storage, LLC; Salt Plains Storage, LLC; Jefferson Island Storage & Hub, L.L.C.; Eagle Rock Desoto Pipeline, L.P.; The Brooklyn Union Gas Company; Arkansas Ok Gas Corporation; Notice of Baseline Filings

September 29, 2010.

Take notice that on September 22, 2010, September 23, 2010, September 24, 2010, and September 27, 2010, respectively the applicants listed above submitted their baseline filing of its Statement of Operating Conditions for services provided under section 311 of the Natural Gas Policy Act of 1978 (NGPA).

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive 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 Wednesday, October 13, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–24975 Filed 10–4–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 13809–000; 13814–000]

Lock+ Hydro Friends Fund XLIX; FFP Missouri 15, LLC; Notice of Competing Preliminary Permit Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

September 28, 2010.

On July 12, 2010, Lock+ Hydro Friends Fund XLVIII (Hydro Friends) and FFP Missouri 15, LLC (FFP) filed preliminary permit applications, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of a hydropower project at the U.S. Army Corps of Engineers' (Corps) Mississippi River Lock and Dam #14 structure, located on the Mississippi River near Bettendorf, Rockland County, Illinois. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

Hydro Friends' proposed Lock and Dam #14 Hydropower Project (Project No. 13809–000) would consist of: (1) One 109-foot-wide x 40-foot-high lock frame module placed downstream from the lock and dam, housed between two pre-fabricated concrete walls that would guide flows into the turbines. The lock frame module would consist of ten hydropower turbines, each rated at 1.25 megawatts (MW) and have a total rated capacity of 12.5 MW; (2) fish/debris screens located upstream of the module; (3) a new transformer in a new switchyard; (4) a 3-mile-long 69-kilovolt (kV) transmission line extending from the switchyard to an existing nearby distribution line; and (5) appurtenant facilities. Hydro Friends is also exploring alternatives that would locate the module in the downstream section of the Corps' navigational lock, and upstream of the dam. Each design would have an average annual generation of 54,788 megawatt-hours per year (MWh/yr). The project would operate run-of-river and utilize flows released from the dam.

Applicant Contact: Mr. Wayne F. Krouse, Chairman and CEO, Hydro Green Energy, LLC, 5090 Richmond Avenue #390, Houston, TX 77056; Telephone: (877) 556–6566 x 709.

FFP's Mississippi Lock and Dam #14 Project (Project No. 13814–000) would consist of: (1) Two to four modular generation units placed in 12 of the existing gate bays of the Corps' lock and dam structure. These units would contain compact bulb turbines with individual unit capacities of 0.35 MW and 0.70 MW and have a combined capacity of 16.8 MW; (2) a 30-foot x 40-foot control building located on the south side of the river; (3) a 13,100-foot-long transmission line extending south from the switchyard near the proposed powerhouse to an interconnection point on the Illinois shore with an existing transmission line; and (4) appurtenant facilities. The proposed operating voltage would be in the 34 to 138-kV range. FFP is also exploring an alternative that would involve construction of a new 220-foot-long x 250-foot-wide x 50-foot-high conventional powerhouse, intake channel, and tailrace opposite the south side of the river. The new proposed powerhouse would contain four horizontal bulb turbines rated at 4.2 MW each. Each design would have a total energy generation of 145 gigawatt-hours per year. The project would utilize Corps designated flows from the Mississippi Lock and Dam #14 structure and operate as directed by the Corps.

Applicant Contact: Mr. Ramya Swaminathan, Free Flow Power Corporation, 33 Commercial Street, Gloucester, MA 01930; Telephone: (978) 283–2822.

FERC Contact: Tyrone A. Williams, *tyrone.williams@ferc.gov* or (202) 502–6331.

Deadline for filing comments, motions to intervene, and competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance date of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the "eFiling" link. For a simpler method of submitting text only comments, click on "eComment." For assistance, please contact FERC Online Support at *FERCOnlineSupport.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly recommends electronic filing, documents may also be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.*

More information about this project, including a copy of the application can be viewed or printed on the "eLibrary" link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13809) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–24955 Filed 10–4–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR10–115–000]

Acadian Gas Pipeline System; Notice of Compliance Filing

September 24, 2010.

Take notice that on September 22, 2010, Acadian Gas Pipeline System, in compliance with the Commission's July 26, 2010 Letter Order issued in Docket Nos. PR09–28–000 and PR09–28–001,[1] filed a revised Statement of Rates in its Statement of Operating Conditions implementing interruptible transportation rates of $0.2796 per MMbtu, effective August 1, 2009.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 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 Monday, October 4, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–24940 Filed 10–4–10; 8:45 am]

BILLING CODE 6717–01–P

[1] *See Acadian Gas Pipeline System,* Docket Nos. PR09–28–000 and PR09–28–001 (July 26, 2010) (unpublished letter order).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR10–37–001]

Washington 10 Storage Corporation; Notice of Compliance Filing

September 24, 2010.

Take notice that on September 22, 2010, Washington 10 Storage Corporation, in compliance with the Commission's September 17, 2010 Letter Order issued in Docket No. PR10–37–000,[1] filed a revised Statement of Operating Conditions reflecting an effective date of June 18, 2010.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest

[1] *See Washington 10 Storage Corporation,* Docket No. PR10–37–000, (September 17, 2010) (unpublished letter order).

on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 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 Monday, October 4, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–24939 Filed 10–4–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR09–29–003]

Cypress Gas Pipeline, LLC; Notice of Compliance Filing

September 24, 2010.

Take notice that on September 22, 2010, Cypress Gas Pipeline, LLC (Cypress) filed a refund report in compliance with its June 11, 2010 Offer of Settlement Agreement (Settlement Agreement) in Docket No. PR09–29–002 and the Commission's July 26, 2010 Letter Order approving Cypress Gas' Settlement Agreement, issued in Docket Nos. PR09–29–000, PR09–29–001, and PR09–29–002.[1]

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 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 Monday, October 4, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–24938 Filed 10–4–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR09–28–002]

Acadian Gas Pipeline System; Notice of Compliance Filing

September 24, 2010.

Take notice that on September 22, 2010, Acadian Gas Pipeline System (Acadian) filed its refund report pursuant to its June 11, 2010 Offer of Settlement Agreement (Settlement Agreement) and the Commission's July 26, 2010 Letter Order approving Acadian's Settlement Agreement, issued in Docket Nos. PR09–29–000 and PR09–28–001.[1]

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 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 Monday, October 4, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–24937 Filed 10–4–10; 8:45 am]

BILLING CODE 6717–01–P

[1] *See Cypress Gas Pipeline, LLC,* Docket No. PR09–29–000 *et al.,* (July 26, 2010) (unpublished letter order).

[1] *See Acadian Gas Pipeline System,* Docket Nos. PR09–28–000 and PR09–28–001 (July 26, 2010) (unpublished letter order).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR10–116–000]

Cypress Gas Pipeline, LLC; Notice of Compliance Filing

September 24, 2010.

Take notice that on September 22, 2010, Cypress Gas Pipeline, LLC, in compliance with the Commission's July 26, 2010 Letter Order issued in Docket Nos. PR09–29–000, PR09–29–001 and PR09–29–002,[1] filed a revised Statement of Rates in its Statement of Operating Conditions implementing interruptible transportation rates of $0.1625 per MMbtu, effective August 1, 2009.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 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 Monday, October 4, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–24941 Filed 10–4–10; 8:45 am]

BILLING CODE 6717–01–P

[1] *See Cypress Gas Pipeline, LLC,* Docket Nos. PR09–29–000, et al. (July 26, 2010) (unpublished letter order).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DI10–18–000]

Dirk Wiggins; Notice of Declaration of Intention and Soliciting Comments, Protests, and/or Motions To Intervene

September 28, 2010.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Docket No:* DI10–18–000.

c. *Date Filed:* September 10, 2010.

d. *Applicant:* Dirk Wiggins.

e. *Name of Project:* BC Creek Hydro Project.

f. *Location:* The proposed BC Creek Hydro Project will be located on BC Creek, tributary to Wallowa Lake and Wallowa River, near the town of Joseph, Wallowa County, Oregon, affecting T. 03 S., R. 45 E., sec. 29, SW1/4., Willamette Meridian.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Dirk Wiggins, 84646 Ponderosa Lane, Joseph, Oregon 97846; *telephone:* (541) 432–5263; *e-mail: http://www.dirk.wiggins@gmail.com.*

i. *FERC Contact:* Any questions on this notice should be addressed to Henry Ecton, (202) 502–8768, or *e-mail address: henry.ecton@ferc.gov*

j. *Deadline for filing comments, protests, and/or motions:* October 28, 2010.

All documents should be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* Please include the docket number (DI10–18–000) on any comments, protests, and/or motions filed.

k. *Description of Project:* The proposed BC Creek Hydro Project will consist of: (1) A small diversion to a steel holding tank; (2) an 8-inch-diameter, 1,550-foot-long steel pipe penstock; (3) a powerhouse containing a 20-kW Pelton-type turbine/generator; (4) a short tailrace to BC Creek; (5) a 200-foot-long transmission line; and (6) appurtenant facilities. The project will be connected to an interstate grid.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the proposed project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Locations of the Application:* Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214.

In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTESTS", AND/OR "MOTIONS TO INTERVENE", as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–24950 Filed 10–4–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL10–54–000]

Desert Southwest Power, LLC; Notice of Filing

September 27, 2010.

Take notice that on September 24, 2010, Desert Southwest Power, LLC (Desert Southwest) supplemented the responses filed on September 10, 2010 with additional clarifying information, in response to the Federal Energy Regulatory Commission's (Commission) request for additional information contained in the Commission's July 28, 2010 letter regarding Desert Southwest's petition for declaratory order requesting incentive rate treatment for its proposed transmission project filed on March 30, 2010.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on October 4, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–24945 Filed 10–4–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–2954–000]

Garland Power Company; Supplemental Notice that Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

September 29, 2010.

This is a supplemental notice in the above-referenced proceeding of Garland Power Company's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is October 19, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–24970 Filed 10–4–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–2946–000]

Corinth Energy, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

September 29, 2010.

This is a supplemental notice in the above-referenced proceeding of Corinth Energy, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is October 19, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–24968 Filed 10–4–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–2874–000]

Echelon Investments Inc.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request For Blanket Section 204 Authorization

September 29, 2010.

This is a supplemental notice in the above-referenced proceeding of Echelon Investment Inc.'s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 19, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–24959 Filed 10–4–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–2873–000]

Lexington Power & Light, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

September 29, 2010.

This is a supplemental notice in the above-referenced proceeding of Lexington Power & Light, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 19, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access

who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–24958 Filed 10–4–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–3051–000]

Champion Energy, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

September 28, 2010.

This is a supplemental notice in the above-referenced proceeding of Champion Energy, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 18, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–24952 Filed 10–4–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–3023–000]

RJF-Morin Energy, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

September 29, 2010.

This is a supplemental notice in the above-referenced proceeding of RJF-Morin Energy, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 19, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–24972 Filed 10–4–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–3022–000]

Cianbro Energy, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

September 29, 2010.

This is a supplemental notice in the above-referenced proceeding of Cianbro Energy, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is October 19, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–24971 Filed 10–4–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–2951–000]

Shipyard Energy, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

September 29, 2010.

This is a supplemental notice in the above-referenced proceeding of Shipyard Energy, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 19, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–24969 Filed 10–4–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–2943–000]

Smart One Energy, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

September 29, 2010.

This is a supplemental notice in the above-referenced proceeding of Smart One Energy, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 19, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor

must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–24967 Filed 10–4–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–2894–000]

PalletOne Energy, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

September 29, 2010.

This is a supplemental notice in the above-referenced proceeding of PalletOne Energy, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is October 19, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–24966 Filed 10–4–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–2892–000]

Lavalley Energy, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

September 29, 2010.

This is a supplemental notice in the above-referenced proceeding of Lavalley Energy, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 19, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–24964 Filed 10–4–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–2890–000]

Hammond Belgrade Energy, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

September 29, 2010.

This is a supplemental notice in the above-referenced proceeding of Hammond Belgrade Energy, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 19, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–24962 Filed 10–4–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–2889–000]

Luminescent Systems Inc.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

September 29, 2010.

This is a supplemental notice in the above-referenced proceeding of Luminescent Systems Inc.'s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 19, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–24961 Filed 10–4–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–2893–000]

SJH Energy, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

September 29, 2010.

This is a supplemental notice in the above-referenced proceeding of SJH Energy, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 19, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access

who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–24965 Filed 10–4–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–2891–000]

Elektrisola Inc.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

September 29, 2010.

This is a supplemental notice in the above-referenced proceeding of Elektrisola, Inc.'s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 19, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–24963 Filed 10–4–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–2887–000]

New Hampshire Industries, Inc.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

September 29, 2010.

This is a supplemental notice in the above-referenced proceeding of New Hampshire Industries, Inc.'s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 19, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–24960 Filed 10–4–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–3049–000]

Champion Energy Services, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

September 28, 2010.

This is a supplemental notice in the above-referenced proceeding of Champion Energy Services, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is October 18, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–24951 Filed 10–4–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13563–001]

Juneau Hydropower, Inc.; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Alternative Licensing Procedures

September 24, 2010.

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Alternative Licensing Procedures.

b. *Project No.:* 13563–001.

c. *Dated Filed:* July 28, 2010.

d. *Submitted By:* Juneau Hydropower, Inc.

e. *Name of Project:* Sweetheart Lake Hydroelectric Project.

f. *Location:* On the Lower Sweetheart Lake and Sweetheart Creek in the City and Borough of Juneau, Alaska. The project will occupy United States lands located in the Tongass National Forest administered by the National Forest Service.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* Duff W. Mitchell, Juneau Hydropower, Inc., P.O. Box 22775, Juneau, AK 99802; (907) 789–2775; e-mail at *duff.mitchell@juneauhydro.com.*

i. *FERC Contact:* Jennifer Harper at (202) 502–6136; or e-mail at *jennifer.harper@ferc.gov.*

j. Juneau Hydropower, Inc. filed its request to use the Alternative Licensing Procedures on July 28, 2010. Juneau Hydropower, Inc. provided public notice of its request on August 13, 2010. In a letter dated September 24, 2010, the Director of the Office of Energy Projects approved Juneau Hydropower, Inc.'s request to use the Alternative Licensing Process.

k. *With this notice, we are initiating informal consultation with:* (a) The U.S. Fish and Wildlife Service and NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402; (b) NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920; and (c) the Alaska State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. On August 20, 2010, the Commission designated Juneau Hydropower, Inc. as the Commission's non-federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act, and section 305 of the Magnuson-Stevens Fishery Conservation and Management Act. On August 24, 2010, the Commission designated Juneau Hydropower, Inc. as the Commission's non-federal representative for carrying out informal consultation pursuant to section 106 of the National Historic Preservation Act.

m. Juneau Hydropower, Inc. filed a Pre-Application Document (PAD; including a proposed process plan, schedule, and communications protocol) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the "eLibrary" link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCONlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph h.

o. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–24935 Filed 10–4–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13331–001]

City of Quincy, IL; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

September 24, 2010.

a. *Type of Filing:* Notice of Intent (NOI) to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.* 13331–001.

c. *Dated Filed:* August 12, 2010.

d. *Submitted By:* City of Quincy, Illinois.

e. *Name of Project:* Upper Mississippi River Lock and Dam No. 24 Project.

f. *Location:* At the U.S. Army Corps of Engineers' (Corps') Upper Mississippi River Lock and Dam No. 24 on the Mississippi River in Calhoun County, Illinois, and Pike County, Missouri, near the town of Clarksville, Missouri. As currently proposed in the NOI and the Pre-Application Document (PAD) the project would occupy about 10 acres of United States lands administered by the Corps.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 808(b)(1) and 18 CFR 5.5 of the Commission's regulations.

h. *Potential Applicant Contact:* Mr. Chuck Bevelheimer, Director, Planning and Development, City of Quincy, 730 Maine Street, Quincy, IL 62301; or at (217) 228–4500.

i. *FERC Contact:* Joseph Adamson at (202) 502–8085; or e-mail at *joseph.adamson@ferc.gov.*

j. On August 12, 2010, the City of Quincy, Illinois filed its request to use the Traditional Licensing Process and provided public notice of its request. In a letter dated September 22, 2010, the Director, Division of Hydropower Licensing, approved the City of Quincy, Illinois' request to use the Traditional Licensing Process.

k. *With this notice, we are initiating informal consultation with:* (a) The U.S. Fish and Wildlife Service under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402; and (b) the Illinois and Missouri Historic Preservation Officers, as required by section 106 of the National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating the City of Quincy, Illinois as the Commission's non-federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act, and section 106 of the National Historic Preservation Act.

m. The City of Quincy, Illinois filed a PAD, including a proposed process plan and schedule with the Commission, pursuant to 18 CFR 5.5 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the "eLibrary" link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph h.

o. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–24934 Filed 10–4–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–496–000]

Cameron LNG, LLC; Notice of Intent To Prepare an Environmental Assessment for the Proposed Cameron LNG Export Project and Request for Comments on Environmental Issues

September 29, 2010.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Cameron LNG Export Project involving the export of liquefied natural gas (LNG) from the existing LNG terminal by Cameron LNG, LLC (Cameron LNG) in Cameron Parish, Louisiana. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine what issues need to be evaluated in the EA. Please note that the scoping period will close on October 29, 2010.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives are asked to notify their constituents of this planned project and encourage them to comment on their areas of concern.

Summary of the Proposed Project

Cameron LNG proposes to export LNG from its existing LNG terminal in Cameron Parish, Louisiana. The Cameron LNG Export Project would allow Cameron LNG's customers to export up to 250 billion cubic feet of foreign-sourced LNG over a two year period. According to Cameron LNG, its project would provide additional flexibility and marketing opportunities to its customers.

The general location of the existing Cameron LNG terminal is shown in Appendix 1.[1]

Land Requirements

Based on the preliminary information, construction of the Cameron LNG Export Project would not involve any facility modifications; therefore, there would be no land disturbance.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[2] to discover and address concerns the public may have about proposals. This process is referred to as "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. All comments received will be considered during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the

[1] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *http://www.ferc.gov* using the link called "eLibrary" or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] "We," "us," and "our" refer to the environmental staff of the Commission's Office of Energy Projects.

construction and operation of the proposed project under these general headings:

- Land use;
- Water resources, fisheries, ballast water, and wetlands;
- Cultural resources;
- Wildlife;
- Air quality and noise;
- Endangered and threatened species; and
- Public safety.

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be presented in the EA. The EA will be placed in the public record and, depending on the comments received during the scoping process, may be published and distributed to the public. A comment period will be allotted if the EA is published for review. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure your comments are considered, please carefully follow the instructions in the Public Participation section beginning on page 4.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the Louisiana State Historic Preservation Office (SHPO), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[3] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO as the project is further developed. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

[3] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Historic properties are defined in those regulations as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register for Historic Places.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that they will be received in Washington, DC on or before October 29, 2010.

For your convenience, there are three methods which you can use to submit your comments to the Commission. In all instances please reference the project docket number (CP10–496–000) with your submission. The Commission encourages electronic filing of comments and has expert eFiling staff available to assist you at (202) 502–8258 or *efiling@ferc.gov*.

(1) You may file your comments electronically by using the eComment feature, which is located on the Commission's Web site at *http://www.ferc.gov* under the link to Documents and Filings. An eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments electronically by using the eFiling feature, which is located on the Commission's Web site at *http://www.ferc.gov* under the link to Documents and Filings. With eFiling you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "eRegister." You will be asked to select the type of filing you are making. A comment on a particular project is considered a "Comment on a Filing"; or

(3) You may file a paper copy of your comments at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who own homes within certain distances of aboveground facilities and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If the EA is published for distribution, copies will be sent to the environmental mailing list for public review and comment.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an "intervenor" which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the "e-filing" link on the Commission's Web site.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site at *http://www.ferc.gov* using the "eLibrary" link. Click on the eLibrary link, click on "General Search" and enter the docket number, excluding the last three digits in the Docket Number field (i.e., CP10–496). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/*

EventCalendar/EventsList.aspx along with other related information.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–24956 Filed 10–4–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–417–000]

Texas Gas Transmission, LLC; Notice of Motion To Vacate

September 28, 2010.

Take notice that on September 22, 2010, Texas Gas Transmission, LLC (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP07–417–000, a motion to vacate a portion of the certificate authority granted on May 2, 2008 [1] allowing Texas Gas to construct, own, operate, and maintain the Kosciusko Compressor Station in Attala County, Mississippi. Texas Gas states that, in light of Texas Eastern Transmission, L.P.'s (Texas Eastern) authorization and plans to upgrade its existing compressor station in order to facilitate the connection between Texas Eastern's pipeline and Texas Gas' Greenville Lateral, the construct of the Kosciusko Compressor Station authorized in the May 20 Order will not be required. The purpose of this station was to compress gas to a sufficient pressure to deliver gas into the downstream pipeline owned by Texas Eastern. Since Texas Gas can meet its certificated capacity without the Kosciusko Compressor Station, Texas Gas asserts that the construction of the Kosciusko Compressor Station is no longer necessary.

The motion is on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

[1] *Texas Gas Transmission,* LLC, 123 FERC ¶ 61,118 (2008), *Order Amending Certificate,* 125 FERC ¶62,030 (2008), *Order Amending Certificate,* 125 FERC ¶62,148 (2008), *Order Amending Certificate,* 126 FERC ¶62,008 (2009). ("May 2 Order").

Any questions regarding this Application should be directed to Kathy D. Fort, Manager of Certificates and Tariffs, Texas Gas Transmission, LLC, 3800 Frederica Street, Owensboro, Kentucky, 42301 or by telephone at 270–688–6825 or fax at 270–688–5871.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, 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: October 19, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–24948 Filed 10–4–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–504–000]

D'Lo Gas Storage, LLC; Notice of Petition

September 24, 2010.

Take notice that on September 21, 2010, D'Lo Gas Storage, LLC (Petitioner), 1002 East St. Mary Boulevard, Lafayette, Louisiana 70503, filed in Docket No. CP10–504–000, a petition for an Exemption of Temporary Acts and Operations and Request for Expedited Approval, pursuant to Rule 207(a)(5) of the Commission's Rules of Practice and Procedure, 18 CFR 385.207(a)(5) and section 7(c)(1)(B) of the Natural Gas Act, to perform specific temporary activities related to drill site preparation and drilling of three test wells in Simpson County, MS. Specifically, Petitioner proposes to drill two stratigraphic test wells: one to determine salt characteristics and the other to determine the viability of the salt water disposal, and one water test well, all designed to determine feasibility of developing the underlying salt dome formation for natural gas storage, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to J. Gordon Pennington, 2707 N. Kensington St., Arlington, VA 22207, telephone no. (703) 533–7638, facsimile no. (703) 241–1842, and *e-mail: pennington5@verizon.net* and Theo B. Bean, Jr., D'Lo Gas Storage, LLC, 1002 East St. Mary Blvd., Lafayette, LA 70503, telephone no. (337) 234–4122, facsimile no. (337) 234–2330, and *e-mail: tbean@beanresources.com.*

Pursuant to Section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, 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 Standard Time, Friday October 8, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–24977 Filed 10–4–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RM06–16–010; RM06–16–011]

Mandatory Reliability Standards for the Bulk Power System; Notice Allowing Post-Technical Conference Comments

September 24, 2010.

On September 23, 2010, the Federal Energy Regulatory Commission conducted a Technical Conference on Frequency Response in the Wholesale Electric Grid. The purpose of the technical conference was to provide an opportunity for a public discussion regarding technical issues pertaining to the development of a frequency response requirement. All interested persons are invited to file written comments on or before October 14, 2010, that relate to the issues discussed

during the technical conference. Commenters are encouraged to use the questions presented in the agenda for the conference to organize their comments.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–24942 Filed 10–4–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12680–004]

Western Passage OCGen™ Power Project; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

September 24, 2010.

On July 1, 2010, ORPC Maine, LLC (ORPC Maine) filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Western Passage OCGen™ Power Project, located in Western Passage, in the vicinity of the City of Eastport, Washington County, Maine. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of: (1) 2 OCGen™ hydrokinetic tidal devices each consisting of four 150-kilowatt turbine generator units for a combined capacity of 1,200 kilowatts; (2) an anchoring support structure; (3) a mooring system; (4) a 1,500-foot-long submersible cable connecting the turbine-generating units of each device to a shore station; (5) a 2,800-foot-long, 34.5-kilovolt transmission line connecting the shore station to an existing distribution line; and (6) appurtenant facilities. The estimated annual generation of the Western Passage OCGen™ Power Project would be 3.12 to 3.96 gigawatt-hours.

Applicant Contact: Christopher R. Sauer, President and CEO, Ocean Renewable Power Company, LLC, 120 Exchange Street, Suite 508, Portland, Maine 04101; phone: (207) 772–7707.

FERC Contact: Michael Watts, 202–502–6123.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the "eFiling" link. For a simpler method of submitting text only comments, click on "eComment." For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–12680) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–24981 Filed 10–4–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13801–000]

Kendall Head Tidal Energy Project; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

September 24, 2010.

On June 29, 2010, ORPC Maine, LLC (ORPC Maine) filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Kendall Head Tidal Energy Project, located in the Western Passage in the Atlantic Ocean in Washington County, Maine. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of: (1) 4 OCGen™ hydrokinetic tidal devices each consisting of two 150-kilowatt turbine generator units for a combined capacity of 1,200 kilowatts; (2) an anchoring support structure; (3) a mooring system; (4) a 2,700-foot-long submersible cable connecting the turbine-generating units to a shore station; (5) a 8,500-foot-long, 34.5-kilovolt transmission line connecting the shore station to an existing distribution line; and (6) appurtenant facilities. The estimated annual generation of the Kendall Head Tidal Energy Project would be 3.12 to 3.96 gigawatt-hours.

Applicant Contact: Christopher R. Sauer, President and CEO, Ocean Renewable Power Company, LLC, 120 Exchange Street, Suite 508, Portland, Maine 04101; *phone:* (207) 772–7707.

FERC Contact: Michael Watts, 202–502–6123.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the "eFiling" link. For a simpler method of submitting text only comments, click on "Quick Comment." For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13801) in the docket number field to

access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–24936 Filed 10–4–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12711–004]

Cobscook Bay OCGen™ Power; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

September 24, 2010.

On July 1, 2010, ORPC Maine, LLC (ORPC Maine) filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Cobscook Bay OCGen™ Power Project, located in the Cobscook Bay, near the City of Eastport, Washington County, Maine. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of: (1) 5 TidGen™ hydrokinetic tidal devices each consisting of a bottom support frame and a single 150-kilowatt turbine generator unit for a combined capacity of 750 kilowatts; (2) a 4,530-foot-long submersible cable connecting the turbine-generating units of each device to a shore station; (3) a 100-foot-long, 13-kilovolt transmission line connecting the shore station to an existing distribution line; and (4) appurtenant facilities. The estimated annual generation of the Cobscook Bay OCGen Power Project would be 1.95 to 2.48 gigawatt-hours.

Applicant Contact: Christopher R. Sauer, President and CEO, Ocean Renewable Power Company, LLC, 120 Exchange Street, Suite 508, Portland, Maine 04101; phone: (207) 772–7707.

FERC Contact: Michael Watts, 202–502–6123.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp)* under the "eFiling" link. For a simpler method of submitting text only comments, click on "Quick Comment." For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–12711) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–24933 Filed 10–4–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–502–000]

Gulf South Pipeline Company, LP; Notice of Request Under Blanket Authorization

September 29, 2010.

Take notice that on September 21, 2010, Gulf South Pipeline Company, LP (Gulf South), 9 Greenway Plaza, Suite 2800, Houston, Texas 77046, filed a prior notice request pursuant to sections 157.205, 157.208, and 157.210 of the Commission's regulations under the Natural Gas Act (NGA) for authorization to drill construct an additional compressor unit in Mobile County, Alabama. Specifically, Gulf South proposes to construct one 2,375 horsepower (hp) reciprocating compressor unit at its existing Airport Compressor Station. Gulf South states that the additional compressor unit is necessary to increase the reliability of the Airport Compressor Station by allowing the station to operate at both a lower minimum flow and higher maximum flow. Additionally, Gulf South proposes to construct a new building to house the existing 4,735 hp compressor unit, the new 2,375 hp unit, and a service crane/warehouse area, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding the application should be directed to M. L. Gutierrez, Director, Regulatory Affairs, Gulf South Pipeline Company, LP, 9 Greenway Plaza, Suite 2800, Houston, Texas 77046, telephone no. (713) 479–8252, facsimile no. (713) 479–1745 and *E-mail: Nell.Gutierrez@bwpmlp.com.*

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–24957 Filed 10–4–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Supplemental Notice of Meeting

September 27, 2010.

On September 15, 2010, the Commission provided notice that a meeting will be held to present the results of the cost benefit analysis conducted by Charles River Associates and Resero Consulting to study the effects of Entergy Services, Inc. and Cleco Power joining the Southwest Power Pool regional transmission organization. As stated in the September 15 notice, the meeting will be held on September 30, 2010 from 9 a.m. to 12 p.m. at the following address:

Astor Crowne Plaza, 739 Canal Street, New Orleans, LA 70130, 504–962–0500.

The attached agenda provides details on the topics that will be discussed at the meeting. Those wishing to attend the meeting by teleconference may do so using dial-in number (877) 932–5833 and passcode 157403.

For further information about this meeting, please contact:

Patrick Clarey, Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (317) 249–5937, *patrick.clarey@ferc.gov.*

Doug Roe, Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6566, *douglas.roe@ferc.gov.*

Kimberly D. Bose,

Secretary.

Final Presentation on the Cost Benefit Analysis Conducted by Charles River Associates and Resero Consulting To Study the Effects of Entergy Services, Inc. and Cleco Power Joining the Southwest Power Pool Regional Transmission Organization

Agenda

9 a.m. to 9:15 a.m.—Introductions & Overview of Agenda
9:15 a.m. to 9:45 a.m.—Opening Statements
9:50 a.m. to 10 a.m.—Overview of Study History & Process
10 a.m. to 10:10 a.m.—Break
10:10 a.m. to 11:20 a.m.—Final Results Presentation
11:20 a.m. to 11:30 a.m.—Next Steps
11:30 a.m. to 12 p.m.—Question and Answer Session
12 p.m.—Meeting Adjourned

[FR Doc. 2010–24946 Filed 10–4–10; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2003–0033; FRL–9210–5]

Agency Information Collection Activities; Submission of EPA ICR No. 2078.01 to OMB for Review and Approval; Comment Request

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on March 31, 2011. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before December 6, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2003–0033 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov.*
- *Fax:* 202–566–9744.
- *Mail:* Air and Radiation Docket Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* EPA Air and Radiation Docket, EPA Docket Center, Environmental Protection Agency, EPA West, Room B102, 1301 Constitution Ave, NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2003–0033. 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. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Christopher Kent, Climate Protection Partnership Division, Office of Air and Radiation, MC 6202J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* 202–343–9046; *fax number:* 202–343–2200; *e-mail address: kent.christopher@epa.gov.*

SUPPLEMENTARY INFORMATION:

How can I access the docket and/or submit comments?

EPA has established a public docket for this ICR under Docket ID No. HQ–OAR–2003–0033 for each of the ICRs identified in this document, which is available for online viewing at *http://www.regulations.gov,* or inperson viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC 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 Reading Room is 202–566–1744, and the telephone number for Air and Radiation Docket is 202–566–1742.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified in this document.

What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) 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;

(ii) 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;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under **DATES**.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What information collection activity or ICR does this apply to?

Docket ID No. HQ–OAR–2003–0033

Affected Entities: Entities potentially affected by this action include Partners in ENERGY STAR's product labeling program.

Title: Information Collection Activities associate with EPA's ENERGY STAR product labeling.

ICR Numbers: EPA ICR No. 2078.01, OMB Control No. 2060–0528.

ICR Status: This ICR is currently scheduled to expire on March 31, 2011. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: ENERGY STAR is a voluntary program developed in collaboration with industry to create a self-sustaining market for energy efficient products. The centerpiece of the program is the ENERGY STAR label, a registered certification label that helps consumers identify products that save energy, save money, and help protect the environment without sacrificing quality or performance. In order to protect the integrity of the label and enhance its effectiveness in the marketplace, EPA must ensure that products carrying the label meet appropriate program requirements.

The ENERGY STAR program has determined it necessary to shift from a self-certification program to one in which we have an enhanced qualification and verification process with all testing being done in EPA-recognized, accredited labs and partners participating in product-specific certification programs. These changes are an effort to preserve the consumer confidence in the ENERGY STAR label and to protect the significant value it offers program partners. EPA believes that the new requirements will mean that leadership companies' participation and the ENERGY STAR label will become even more meaningful in the market.

Maintaining the value of this brand requires ensuring products labeled with the ENERGY STAR deliver on their promise to the consumer. So beginning in January 2011, manufacturers must obtain third party certification for new products labeled with the ENERGY STAR mark. As with previous program requirements, program participants submit signed Partnership Agreements indicating that they will adhere to logo-use guidelines and that participating products meet specified energy performance criteria based on a standard test method.

As part of our contribution to the overall success of the program, EPA has agreed to facilitate the sale of qualifying products by providing consumers with easy-to-use information about the products. To be effective, EPA and its relevant recognized certification body must receive qualifying product information from participating manufacturers. Partners need to provide qualifying information prior to labeling so as to ensure that EPA information is recent and accurate. The information will be compiled by the certification body which will then provide EPA with the appropriate data so the product may be incorporated into a complete qualifying products list per product category, posted on the ENERGY STAR Web site, and supplied to those purchasers who request it via phone, fax, or e-mail.

In order to monitor progress and support the best allocation of resources, EPA also asks manufacturers to submit annual shipment data for their ENERGY STAR qualifying products. EPA is flexible as to the methods by which manufacturers may submit unit shipment data. For example, if manufacturers already submit this type of information to a third party, such as a trade association, they are given the option of arranging for shipment data to be sent to EPA via this third party to avoid duplication of efforts and to ensure confidentiality. In using any shipment data received directly from a partner, EPA will mask the source of the data so as to protect confidentiality.

Finally, Partners that wish to receive recognition for their efforts in ENERGY STAR may submit an application for the Partner of the Year Award.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 76.53 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to

respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The annual burden to respondents is approximately 49,738 hours, at a cost of approximately $4,565,289. The total cost for the Agency is $407,854, and the hourly burden is approximately 17,954 hours. A grand total of $5,352,668 and the hourly burden of approximately 67,692 hours is estimated for all information collection activities under ENERGY STAR product labeling.

EPA collects initial information in the Partnership Agreement (PA), which is completed and submitted by every Partner participating in ENERGY STAR. One overarching PA has been developed by EPA for ENERGY STAR product labeling. It is expected that over 1000 new Partners will join each year for the three years of this ICR. The reporting burden for information collection requirements associated with completing the PA for each respondent is estimated to be 4.20 hours. This estimate includes time for reviewing the instructions on the PA, completing and reviewing the information requested by the PA, and submitting the PA.

EPA processes and approves applications for EPA recognition of accreditation bodies, laboratories and certification bodies. All of these entities seek EPA recognition by submitting an application that EPA will then review and ultimately approve or reject. The universe of accreditation bodies is limited and the number of certification bodies is also a limited universe. The number of laboratories seeking EPA recognitions is potentially quite large. EPA estimates that a total of 250 entities will seek recognition of each year for the three years of this ICR.

Every manufacturing Partner is required to obtain third party certification for each of their qualifying products. Sixty three different product categories are covered by EPA under ENERGY STAR. Each product category has specific qualifying efficiency criteria the products must be certified against. Manufacturing partners must work with a product specific certification body. EPA estimates there will 20–30 different certification bodies to cover the 63 product categories. with certification bodies covering one or more product category. EPA estimates that over 16,000 new qualifying products will be recognized each year for the three years of this ICR. The qualifying product list for each product category is updated by the Agency twice a month, for a total of 1638 times annually (63 qualifying product lists multiplied by 26 months in a year).

Each year, ENERGY STAR Partners are required to submit unit shipment data for their ENERGY STAR qualified products. There will be an average of nearly 3000 Partners each year for the three years of this ICR. Therefore, 2250 reports of unit shipment data are expected each year for the three years of this ICR. Unit shipment data will be aggregated for each of the 63 product categories covered by EPA under ENERGY STAR. The reporting burden for information collection requirements associated with unit shipment data for each respondent is estimated to be 6.69 hours. This estimate includes reviewing instructions, gathering unit shipment data, compiling and reviewing it by category, and submitting it.

Partners interested in receiving recognition for their efforts on ENERGY STAR are required to submit a Partner of the Year application. One set of Partner of the Year award criteria are developed by the Agency each year and posted on the ENERGY STAR Web site. An average of 63 award applications are expected each year for the three years of this ICR. The reporting burden for information collection requirements associated with the Partner of the Year application for each respondent is estimated to be 59.29 hours. This estimate includes reviewing instructions on the application, gathering data and information for submission, completing the application, reviewing the information and narrative description required, and submitting the application to EPA.

Are there changes in the estimates from the last approval?

There is a decrease of approximately 39,411 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. The majority of t the decrease is due to EPA's program change to the ENERGY STAR program from one where the program relied on a supplier's self declaration that a product meets the ENERGY STAR criteria to one which manufacturers must obtain third party certification in order to label new products. These decrease are also offset by the increase in the number of respondents submitting new partnership agreements, reporting annually on unit shipment data and applying for Partner of the Year awards.

What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: September 29, 2010.

Beth Craig,

Acting Director, Climate Protection Partnerships Division.

[FR Doc. 2010–24923 Filed 10–4–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–AO–2010–EPA–HQ–AO–2010–0739 FRL–9210–4]

Agency Information Collection Activities; Proposed Collection; Comment Request; Regulatory Pilot Projects (Renewal); EPA ICR No. 1755.09; OMB Control No. 2010–0026

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on March 31, 2011. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before December 6, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–AO–2010–0739 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: oei.docket@epa.gov.*
- *Fax:* (202) 566–9744.
- *Mail:* OA Docket, EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- *Hand Delivery:* Office of the Administrator Docket in the EPA Docket Center (EPA/DC), EPA West, Room

3334, 1301 Constitution Avenue, NW, Washington, DC.

Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–AO–2010–0739 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. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Gerald Filbin, Office of Policy (1807T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–566–2182; fax number: 202–566–2220; e-mail address: *filbin.gerald@epa.gov.*

SUPPLEMENTARY INFORMATION:

How can i access the docket and/or submit comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–AO–2010–0739 which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Office of the Administrator Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC 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 Reading Room is 202–566–1744, and the telephone number for the Office of the Administrator Docket is 202–566–0219.

Use www.regulations.gov to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified in this document.

What information is EPA interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) 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;

(ii) 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;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What should i consider when i prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under DATES.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What information collection activity or ICR does this apply to?

Affected Entities: Entities potentially affected by this action are primarily state environmental agencies that have received EPA State Innovation Grants in the seven (7) competitions that occurred from 2002–2009 that must report to EPA on their performance on those assistance agreements. In some cases this means that these state environmental agencies must gather and report on aspects of environmental performance from multiple regulated facilities participating in funded projects. State Agencies with State innovation Grant Assistance Agreements must report their progress to EPA on a quarterly basis and for the preparation of project final reports. Twenty (20) of the thirty-nine (39) projects funded under the program remain active. These state environmental agencies request performance information from facilities participating in or whose participation is being solicited for pilot projects to test innovation in environmental permitting. Other parties affected by this request may include industrial facilities and state agencies that have been participants in Project XL in circumstances where projects are being completed or terminated and information characterizing the outcomes of those projects is being sought by EPA to close out those individual projects. In addition, state environmental agencies that wish to respond to a request for consultation with EPA on innovative practices that may be pilot tested and evaluated to better address emerging environmental issues (e.g., climate change adaptation) may be affected.

Title: Regulatory Reinvention Pilots (Renewal).

ICR Numbers: EPA ICR No. 1755.09, OMB Control No. 2010–0026.

ICR Status: This ICR is currently scheduled to expire on March 31, 2011. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control

number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This is an information collection request renewal that will allow for the continued information collection related to innovative pilot projects conducted under EPA's project XL and State Innovation grant Programs and to allow EPA and state environmental agencies supported under cooperative agreements for these programs to continue their commitments to monitor the results of remaining pilot tests of regulatory innovation initiated under these programs. While both the EPA State Innovation Grant Program and Project XL no longer accept new project proposals or initiate new projects, the renewal of this ICR is important as it will allow the Agency to continue to assess performance outcomes of remaining regulatory innovation piloting projects and to identify the broader applicability of those pilot projects. Both Project XL and the State Innovation Grant Program have stopped accepting new innovation project proposals but states implementing existing innovative regulatory pilot tests in projects funded by a State Innovation Grant are required to report on progress during the operation of a project and to provide a final project report summarizing outcomes and major findings of each project. EPA's policy on performance measurement in assistance agreements is an implementation outcome under the Government Performance and Results Act (GPRA § 1115 (a)(4) and § 1116(c)). EPA's innovation piloting efforts are multi-media in nature and include programs authorized under the full range of authorizing legislation (*e.g.,* the Clean Air Act, Section 103(b)(3) (*42 U.S.C. 7403(b)(3)*) the Clean Water Act, Section 104(b)(3) (*33 U.S.C. 1254(b)(3)*); the Solid Waste Disposal Act, Section 8001 (*42 U.S.C. 6981*); the Toxic Substances Control Act, Section 10 (*15 U.S.C. 2609*); the Federal Insecticide, Fungicide, and Rodenticide Act, Section 20 (*7 U.S.C. 136r*); and the Safe Drinking Water Act, Sections 1442 (a) and (c) (*42 U.S.C. 1(a) and (c)*).

Responses related to the grant program are required to achieve the quarterly and final project reporting stipulated in the grant awards. Responses related to Project XL are voluntary. EPA remains interested in collaborating with states, tribes and localities for the purpose of testing and evaluating innovative practices, both regulatory and voluntary that lead to better environmental results, particularly as they apply to emerging environmental issues. The measurement of results in these pilot tests and the evaluation of success, efficiency, and broader application are key to EPA's interest in producing better environmental results through innovation.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 100 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential annual respondents: 20.

Frequency of response: 20 quarterly; 85 annually.

Estimated total average number of responses for each respondent: 4.1.

Estimated total annual burden hours: 4820.

Estimated total annual costs: $367,131. This includes an estimated burden cost of $367,131 and an estimated cost of $0 for capital investment or maintenance and operational costs.

Are there changes in the estimates from the last approval?

There is an increase of 318 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This reflects the need to collect information on project performance and outcomes in the form of quarterly reporting and final project reporting for current projects only not addressed in other ICRs.

What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: September 27, 2010.

Elizabeth A. Shaw,

Director, Office of Strategic Environmental Management.

[FR Doc. 2010–24926 Filed 10–4–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9210–6]

Regulatory Training Session With Air Carriers, EPA Regional Partners and Other Interested Parties for Implementation of the Aircraft Drinking Water Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) will hold a two-day training session on the regulatory requirements of the Aircraft Drinking Water Rule (ADWR). Under the ADWR, by April 19, 2011, air carriers who meet the definition of "public water systems" under the Safe Drinking Water Act (SDWA) must meet the first set of requirements of the new regulation. These air carriers must meet the rest of the requirements by October 19, 2011. The training will provide information and instruction on the regulation's general requirements, coliform monitoring and sampling plans, operation and maintenance plans (O&M), public notification, recordkeeping, supplemental treatment, and violations of the rule and their corresponding corrective actions. Additionally, EPA will provide information on updates to the ADWR Reporting and Compliance System (ARCS).

DATES: The training will be held on November 9 through November 10, 2010. An additional training session will be provided in early 2011.

ADDRESSES: The training will be held at the Rosslyn Holiday Inn at 1900 North Fort Myer Drive, Arlington, VA 22209, Phone: (703) 807–2000 Extension 220.

FOR FURTHER INFORMATION CONTACT: Matthew Reed at (202) 564–4719, or e-mail at *reed.matthew@epa.gov.* Information about the final Aircraft Drinking Water Rule may be found at *http://water.epa.gov/lawsregs/rulesregs/sdwa/airlinewater/index.cfm.*

SUPPLEMENTARY INFORMATION: For information on access or services for individuals with disabilities, please contact Matthew Reed at (202) 564–4791 or by e-mail at reed.matthew@epa.gov. To request accommodation of a disability, please contact Matthew Reed preferably at least 10 days prior to the training to give EPA as much time as possible to process your request.

Dated: September 30, 2010.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 2010–24921 Filed 10–4–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2007–1145; FRL–9209–6]

Review of the Secondary National Ambient Air Quality Standards for Oxides of Nitrogen and Oxides of Sulfur

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of supplementary materials.

SUMMARY: The Office of Air Quality Planning and Standards (OAQPS) of EPA recently made available a draft report, *Policy Assessment for the Review of the Secondary National Ambient Air Quality Standards for Oxides of Nitrogen and Oxides of Sulfur: Second External Review Draft* (75 FR 57463, September 21, 2010). The EPA released this preliminary draft document to seek early consultation with the Clean Air Scientific Advisory Committee (CASAC) and to solicit public comment on the overall structure, framing of key issues and conclusions regarding options for key elements of the standards. The four supplementary materials being released at this time are: an errata sheet for Chapter 5; an addendum for Chapter 5; an additional Table 7–1 (summary of key uncertainties); and an additional table for Chapter 9 (summary of options for elements of the nitrogen oxides (NO_X) and sulfur oxides (SO_X) standard).

DATES: Comments on the *Policy Assessment for the Review of the Secondary National Ambient Air Quality Standards for Oxides of Nitrogen and Oxides of Sulfur: Second External Review Draft* along with the supplementary materials should be submitted on or before November 12, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2007–1145, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* Comments may be sent by electronic mail (e-mail) to *a-and-r-docket@epa.gov,* Attention Docket ID No. EPA–HQ–OAR–2007–1145.
- *Fax:* Fax your comments to 202–566–9744, Attention Docket ID. No. EPA–HQ–OAR–2007–1145.
- *Mail:* Send your comments to: Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2007–1145.
- *Hand Delivery or Courier:* Deliver your comments to: EPA Docket Center, 1301 Constitution Ave., NW., Room 3334, Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2007–1145. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov,* or e-mail. The *http://www.regulations.gov,* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov,* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov,* or in hard copy at the Air Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays. The Docket telephone number is 202–566–1742; fax 202–566–9744.

FOR FURTHER INFORMATION CONTACT: Dr. Bryan Hubbell, Office of Air Quality Planning and Standards (Mail code C504–02), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; *e-mail: hubbell.bryan@epa.gov*; telephone: 919–541–0621; fax: 919–541–0804.

General Information

A. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *http://www.regulations.gov,* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Make sure to submit your comments by the comment period deadline identified.

Under section 108(a) of the Clean Air Act (CAA), the Administrator identifies and lists certain pollutants which "cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare." The EPA then issues air quality criteria for listed pollutants, which are commonly referred to as "criteria pollutants." The air quality criteria are to "accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air, in varying quantities." Under section 109 of the CAA, EPA establishes national ambient air quality standards (NAAQS) for each listed pollutant, with the NAAQS based on the air quality criteria. Section 109(d) of the CAA requires periodic review and, if appropriate, revision of existing air quality criteria. The revised air quality criteria reflect advances in scientific knowledge on the effects of the pollutant on public health or welfare. The EPA is also required to periodically review and revise the NAAQS, if appropriate, based on the revised criteria.

The EPA is currently conducting a joint review of the existing secondary (welfare-based) NAAQS for NO_X and SO_X. Because NO_X, SO_X, and their associated transformation products are linked from an atmospheric chemistry perspective as well as from an environmental effects perspective, and because of the National Research Council's 2004 recommendations to consider multiple pollutants in forming the scientific basis for the NAAQS, EPA has decided to jointly assess the science, risks, and policies relevant to protecting the public welfare associated with NO_X and SO_X. This is the first time since NAAQS were established in 1971 that a joint review of these two pollutants has been conducted. Since both the CASAC and EPA have recognized these interactions historically, and the science related to these interactions has continued to evolve and grow to the present day, there is a strong basis for considering them together.

As part of this review of the current secondary (welfare-based) NAAQS for NO_X and SO_X, EPA's OAQPS staff prepared a second draft Policy Assessment. The objective of this assessment is to evaluate the policy implications of the key scientific information contained in the document *Integrated Science Assessment for Oxides of Nitrogen and Sulfur-Ecological Criteria* (*http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=201485*), prepared by EPA's National Center for Environmental Assessment (NCEA) and the results from the analyses contained in the *Risk and Exposure Assessment for Review of the Secondary National Ambient Air Quality Standards for Oxides of Nitrogen and Oxides of Sulfur* (*http://www.epa.gov/ttn/naaqs/standards/no2so2sec/cr_rea.html*). The second draft Policy Assessment plus the supplementary materials are available online at: *http://www.epa.gov/ttn/naaqs/standards/no2so2sec/index.html.* This second draft Policy Assessment will be reviewed by the CASAC during a public meeting to be held October 6 and 7, 2010. Information about this public meeting will be available at *http://yosemite.epa.gov/sab/sabpeople.nsf/WebCommittees/CASAC.*

Dated: September 28, 2010.

Jennifer Noonan Edmonds,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 2010–24922 Filed 10–4–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

[September 29, 2010].

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501 – 3520. Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before December 6, 2010. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via the Internet at Nicholas_A._Fraser@omb.eop.gov and to the Federal Communications Commission via email to PRA@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Benish Shah, Office of Managing Director, (202) 418–7866. For additional information, contact Benish Shah, Office of Managing Director, (202) 418–7866, benish.shah@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0624.

Title: Section 90.483 – Permissible methods and requirements of interconnecting private and public systems of communications.

Form No.: N/A.

Type of Review: Extension.

Respondents: Business of other for–profit.

Number of Respondents and Responses: 100 respondents; 100 responses.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

Total Annual Burden: 100 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: This expiring information collection will be submitted to the Office of Management and Budget (OMB) after this comment period to obtain the three year approval. There is no change in the reporting requirement. There is no change in the Commission's burden estimates.

When a frequency is shared by more than one system, automatic monitoring equipment must be installed at the base station to prevent activation of the transmitter when signals of co–channel stations are present and activation would interfere with communications in progress. Licensees may operate without the monitoring equipment if they have obtained the consent of all co–channel licensees located within a 120 kilometer (75 mile) radius of the interconnected base station transmitter. A statement must be submitted to the Commission indicating that all co–channel licensees have consented to operate without the monitoring equipment. This information is necessary to ensure that licensees comply with the Commission's technical and operational rules, and to prevent activation of the transmitter when signals of co–channel stations are present and could possibly interfere with communications in process.

Federal Communications Commission.

Marlene H. Dortch,

Secretary,

Office of the Secretary,

Office of Managing Director.

[FR Doc. 2010–24634 Filed 10–4–10 8:45 am]

BILLING CODE 6712–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 18, 2010.

A. Federal Reserve Bank of Atlanta (Clifford Stanford, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. Camp QFP, L.L.L.P., Atlanta, Georgia, and its general partners, Mary L. Camp and Lovell E. Camp, both of Atlanta, Georgia; to acquire outstanding voting shares of FMCB Holdings, Inc., and its subsidiary, First Choice Community Bank, both of Dallas, Georgia.

Board of Governors of the Federal Reserve System, September 29, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–24890 Filed 10–4–10; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 28, 2010.

A. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Steele Holdings, Inc., Tyler, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of American State Bank, Arp, Texas.

2. Woodforest Financial Group Employee Stock Ownership Plan (with 401(k) Provisions) (Amended and Restated Effective March 1, 2006) and Woodforest Financial Group Employee Stock Ownership Trust, both of The Woodlands, Texas; to become a bank holding company by acquiring up to 30 percent of the voting shares of Woodforest Financial Group, Inc., The Woodlands, Texas, and indirectly acquire voting shares of Woodforest National Bank, Houston, Texas.

In connection with this application, Applicant also has applied to indirectly acquire Woodforest Bank, FSB, Refugio, Texas, and thereby engage in owning and operating a savings association, pursuant to Section 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, September 29, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–24889Filed 10–4–10; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company

Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 29, 2010.

A. Federal Reserve Bank of Atlanta (Clifford Stanford, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. PFGBI, LLC, McDonough, Georgia; to become a bank holding company by acquiring approximately 50.8 percent of the outstanding voting shares of Montgomery County Bankshares, Inc., and its subsidary, Montgomery County Bank & Trust, both of Ailey, Georgia.

Board of Governors of the Federal Reserve System, September 30, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–24901 Filed 10–4–10; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Advisory Committee on Minority Health

AGENCY: Office of Minority Health, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice of meeting.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (DHHS) is hereby giving notice that the Advisory Committee on Minority Health (ACMH) will hold a meeting. This meeting is open to the public. Preregistration is required for both public attendance and comment. Any individual who wishes to attend the meeting and/or participate in the public comment session should e-mail *acmh@osophs.dhhs.gov.*

DATES: The meeting will be held on Monday, November 15, 2010 from 9 a.m. to 5 p.m. and Tuesday, November 16, 2010 from 9 a.m. to 1 p.m.

ADDRESSES: The meeting will be held at the Doubletree Hotel, 1515 Rhode Island Ave., NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Ms. Monica A. Baltimore, Tower Building, 1101 Wootton Parkway, Suite 600, Rockville, Maryland 20852. Phone: 240–453–2882, Fax: 240–453–2883.

SUPPLEMENTARY INFORMATION: In accordance with Public Law 105–392, the ACMH was established to provide advice to the Deputy Assistant Secretary for Minority Health in improving the health of each racial and ethnic minority group and on the development of goals and specific program activities of the Office of Minority Health.

Topics to be discussed during this meeting will include increasing the health care workforce and strategies to improve the health of racial and ethnic minority populations through the development of health policies and programs that will help eliminate health disparities, as well as other related issues.

Public attendance at the meeting is 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 designated contact person at least fourteen (14) business days prior to the meeting. Members of the public will have an opportunity to provide comments at the meeting. Public comments will be limited to three minutes per speaker. Individuals who would like to submit written statements should mail or fax their comments to the Office of Minority Health at least seven (7) business days prior to the meeting. Any members of the public who wish to have printed material distributed to ACMH committee members should submit their materials to the Executive Secretary, ACMH, Tower Building, 1101 Wootton Parkway, Suite 600, Rockville, Maryland 20852, prior to close of business November 5, 2010.

Dated: September 23, 2010.

Garth N. Graham,

Deputy Assistant Secretary for Minority Health, Office of Minority Health, Office of the Assistant Secretary for Health, Office of the Secretary, U.S. Department of Health and Human Services.

[FR Doc. 2010–24880 Filed 10–4–10; 8:45 am]

BILLING CODE 4150–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Renewal of Declaration Regarding Emergency Use of Doxycycline Hyclate Tablets Accompanied by Emergency Use Information

AGENCY: Office of the Secretary (OS), HHS.

ACTION: Notice.

SUMMARY: The Secretary of Homeland Security determined on September 23, 2008 that there is a significant potential for a domestic emergency involving a heightened risk of attack with a specified biological, chemical, radiological, or nuclear agent or agents—in this case, Bacillus anthracis. On the basis of this determination, the Secretary of Health and Human Services is renewing the October 1, 2008 declaration by former Secretary Michael O. Leavitt of an emergency justifying the authorization of emergency use of doxycycline hyclate tablets accompanied by emergency use information subject to the terms of any authorization issued by the Food and Drug Commissioner under 21 U.S.C. 360bbb–3(a). This notice is being issued in accordance with section 564(b)(4) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 360bbb–3(b)(4).

DATES: This Notice and referenced HHS declaration are effective as of October 1, 2010.

FOR FURTHER INFORMATION CONTACT: Nicole Lurie, MD MSPH, Assistant Secretary for Preparedness and Response, Office of the Secretary, Department of Health and Human Services, 200 Independence Avenue, SW., Washington, DC 20201, Telephone (202) 205–2882 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: On September 23, 2008, former Secretary of Homeland Security, Michael Chertoff, determined that there is a significant potential for a domestic emergency, involving a heightened risk of attack

with a specified biological, chemical, radiological, or nuclear agent or agents—in this case, Bacillus anthracis, although there is no current domestic emergency involving anthrax, no current heightened risk of an anthrax attack, and no credible information indicating an imminent threat of an attack involving Bacillus anthracis. Pursuant to section 564(b) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 360bbb–3(b), and on the basis of such determination, on October 1, 2008, former Secretary of Health and Human Services, Michael O. Leavitt, declared an emergency justifying the authorization of the emergency use of doxycycline hyclate tablets accompanied by emergency use information subject to the terms of any authorization issued under 21 U.S.C. 360bbb–3(a).[1] Pursuant to section 564(b)(2)(B) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 360bbb–3(b), and on the basis of Secretary Chertoff's September 23, 2008 determination, I hereby renew former Secretary Leavitt's October 1, 2008 declaration of an emergency, which I previously renewed on October 1, 2009, justifying the authorization of the emergency use of doxycycline hyclate tablets accompanied by emergency use information subject to the terms of any authorization issued under 21 U.S.C. 360bbb–3(a). I am issuing this notice in accordance with section 564(b)(4) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 360bbb–3(b)(4).

Dated: September 24, 2010.

Kathleen Sebelius,

Secretary.

[FR Doc. 2010–24840 Filed 9–30–10; 11:15 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Voluntary Establishment of Paternity—NPRM.

OMB No.: 0970–0175.

Description: Section 466(a)(5)(C) of the Social Security Act requires States to pass laws ensuring a simple civil process for voluntarily acknowledging paternity under which the State must provide that the mother and putative father must be given notice, orally and in writing, of the benefits and legal responsibilities and consequences of acknowledging paternity. The information is to be used by hospitals, birth record agencies, and other entities participating in the voluntary paternity establishment program that collect information from the parents of children that are born out of wedlock.

Respondents: The parents of children that are born out of wedlock.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
None	1,167,097	1	0.17	198,406.49
Estimated Total Annual Burden Hours:				198,406.49

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: September 30, 2010.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2010–24893 Filed 10–4–10; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0502]

Agency Information Collection Activities; Proposed Collection; Comment Request; National Consumer Surveys on Understanding the Risks and Benefits of FDA-Regulated Medical Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for

[1] Pursuant to section 564(b)(4) of the FFDCA, notice of the determination by the Secretary, DHS, and the declaration by the Secretary, HHS, was provided at 73 FR 58242 (October 6, 2008).

public comment in response to the notice. This notice solicits comments on the National Consumer Surveys on Understanding the Risks and Benefits of FDA-Regulated Medical Products.

DATES: Submit either electronic or written comments on the collection of information by December 6, 2010.

ADDRESSES: Submit either electronic or written comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane., rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Information Management , Food and Drug Administration, 1350 Piccard Dr., P150–400B Rockville, MD 20850, 301–796–3794, *JonnaLynn.Capezzuto@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA'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 respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

National Consumer Surveys on Understanding the Risks and Benefits of FDA-Regulated Medical Products

Risks and benefits are inherent in all FDA-regulated medical products, including drugs, biologics, and medical devices (e.g., pacemakers, implantable cardiac defibrillators, contact lenses, infusion pumps). FDA plays a critical oversight role in managing and preventing injuries and deaths related to medical product use. However, the users of FDA-regulated products are ultimately the ones who determine which products are used and how they are potentially misused. For this reason, it is critical that the public understand the risks and benefits of FDA-regulated medical products to a degree that allows them to make rational decisions about product use.

FDA's responsibility includes communicating about medical products. This encompasses communications that FDA generates and those it oversees through regulation of product manufacturers' and distributors' communications. Activities include, but are not limited to, recall notices, warnings, public health advisories and notifications, press releases, and information made available on its Web site. FDA also regulates communications drafted and disseminated by manufacturers and distributors of many medical products, including all the communications (advertising and labeling) about prescription drugs, biologics, and restricted medical devices, and a subset of communications (omitting advertising) about nonprescription drugs and other medical devices. In order to conduct educational and public information programs relating to these responsibilities, as authorized by Section 1003(d)(2)(D) of the Federal Food Drug and Cosmetic Act (21 U.S.C. section 393), it is beneficial for FDA to conduct research and studies relating to health information as authorized by section 1701(a)(4) of the Public Health Service Act (42 U.S.C. 300u(a)(4)).

In conducting such research, FDA will employ nationally representative surveys of consumers to assess whether the information being disseminated by both the agency and the entities it regulates is appropriately reaching targeted audiences in an understandable fashion. Specifically, the surveys will assess public understanding about the benefits and risks of medical products and FDA's role in regulating these products. The surveys will assess behaviors and beliefs related to the use of medical products, when consumers desire emerging risk information, the likelihood of reporting serious side effects that might be associated with medical product use, perceptions of the credibility of FDA and other potential sources of risk and benefit information, and satisfaction with FDA's communications-related performance.

Parallel surveys of 1,500 non-institutionalized U.S. adults will be administered. One survey of 1,500 subjects will be a telephone survey, and the second survey of another 1,500 subjects will be conducted with members from an Internet panel. Both survey samples will be constructed to be representative of the U.S. population, and both will take approximately 15 minutes to administer. Results from each survey will be compared to provide insight into the best methodology for future studies.

The information collected will be used by FDA in the development of more effective risk communication strategies and messages. The surveys will provide FDA insight as to how well the public understands and incorporates risk/benefit information into their belief structures, and how well the public understands the context within which FDA makes decisions on medical product recalls and warnings. Using this information, the agency will more effectively design messages and select formats and distribution channels that have the greatest potential to influence the target audience's attitudes and behavior in a favorable way. Frequency of *Response:* On occasion. *Affected Public*: Individuals or households; *Type of Respondents*: Members of the public.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN[1]

Type of Response	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Pretests	30	1	30	0.25	8

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

Type of Response	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Screener	6,700	1	6,700	0.10	670
Telephone survey	1,500	1	1,500	0.25	375
Internet panel survey	1,500	1	1,500	0.25	375
Total					1,428

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

These estimates are based on FDA's and the contractor's experience with previous surveys. Prior to administering the surveys with the entire sample, FDA plans to conduct pretests with up to 30 adults; these are meant to evaluate the effectiveness of the programming of the interview protocol, online filters, and skip patterns.

Dated: September 30, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–25007 Filed 10–4–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0464]

Agency Information Collection Activities; Proposed Collection; Comment Request; Testing Communications on Biological Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on communication studies involving biological products, including vaccines and blood products, that are regulated by FDA. This information will be used to explore concepts of interest and assist in the development and modification of communication messages and campaigns to fulfill the Agency's mission to protect the public health.

DATES: Submit either electronic or written comments on the collection of information by December 6, 2010.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Berbakos, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3792, *Elizabeth.Berbakos@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60–day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA'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 respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Testing Communications on Biological Products—New

FDA is authorized by Section 1003(d)(2)(D) of the Federal Food Drug and Cosmetic Act (21 U.S.C. Section 393(d)(2)(D)) (Attachment 2) to conduct educational and public information programs relating to the safety of regulated biological products. FDA must conduct needed research to ensure that such programs have the highest likelihood of being effective. FDA expects that improving communications about biological products including vaccines and blood products will involve many research methods, including individual in-depth interviews, mall-intercept interviews, focus groups, self-administered surveys, gatekeeper reviews, and omnibus telephone surveys.

The information collected will serve three major purposes. First, as formative research it will provide critical knowledge needed about target audiences to develop messages and campaigns about biological product use. Knowledge of consumer and healthcare professional decision-making processes will provide the better understanding of target audiences that FDA needs to design effective communication strategies, messages, and labels. These communications will aim to improve public understanding of the risks and benefits of using biological products including vaccines and blood products by providing users with a better context in which to place risk information more completely.

Second, as initial testing, it will allow FDA to assess the potential effectiveness of messages and materials in reaching and successfully communicating with

their intended audiences. Testing messages with a sample of the target audience will allow FDA to refine messages while still in the developmental stage. Respondents will be asked to give their reaction to the messages in either individual or group settings.

Third, as evaluative research, it will allow FDA to ascertain the effectiveness of the messages and the distribution method of these messages in achieving the objectives of the message campaign. Evaluation of campaigns is a vital link in continuous improvement of communications at FDA.

FDA estimates the burden of this collection of information based on recent prior experience with the various types of data collection methods described above:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN[1]

	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
21 CFR 1003(d)(2)(D)	16,448	1	16,448	0.1739	2,860
Total	16,448	1	16,448	0.1739	2,860

[1] There are no capital costs associated with this collection of information.

Dated: September 30, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–25011 Filed 10–4–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0468]

Agency Information Collection Activities; Proposed Collection; Comment Request; Patent Term Restoration, Due Diligence Petitions, Filing, Format, and Content of Petitions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on FDA's patent term restoration regulations on due diligence petitions for regulatory review period revision. Where a patented product must receive FDA approval before marketing is permitted, the Office of Patents and Trademarks may add a portion of the FDA review time to the term of a patent. Petitioners may request reductions in the regulatory review time if FDA marketing approval was not pursued with "due diligence."

DATES: Submit either electronic or written comments on the collection of information by December 6, 2010.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Berbakos, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., P150–400B, Rockville, MD 20850, 301–796–3792, *Elizabeth.Berbakos@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA'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 respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Patent Term Restoration, Due Diligence Petitions, Filing, Format, and Content of Petitions—21 CFR Part 60 (OMB Control Number 0910–0233)—Extension

FDA's patent extension activities are conducted under the authority of the Drug Price Competition and Patent Term Restoration Act of 1984 (21 U.S.C. 355(j)) and the Animal Drug and Patent Term Restoration Act of 1988 (35 U.S.C. 156). New human drug, animal drug, human biological, medical device, food additive, or color additive products regulated by FDA must undergo FDA safety, or safety and effectiveness, review before marketing is permitted. Where the product is covered by a patent, part of the patent's term may be consumed during this review, which diminishes the value of the patent. In enacting the Drug Price Competition and Patent Term Restoration Act of 1984 and the Animal Drug and Patent Term Restoration Act of 1988, Congress sought to encourage development of new, safer, and more effective medical and food additive products. It did so by authorizing the U.S. Patent and Trademark Office (PTO) to extend the patent term by a portion of the time during which FDA's safety and

effectiveness review prevented marketing of the product. The length of the patent term extension is generally limited to a maximum of 5 years, and is calculated by PTO based on a statutory formula. When a patent holder submits an application for patent term extension to PTO, PTO requests information from FDA, including the length of the regulatory review period for the patented product. If PTO concludes that the product is eligible for patent term extension, FDA publishes a notice that describes the length of the regulatory review period and the dates used to calculate that period. Interested parties may request, under § 60.24 (21 CFR 60.24), revision of the length of the regulatory review period, or may petition under § 60.30 (21 CFR 60.30) to reduce the regulatory review period by any time where marketing approval was not pursued with "due diligence." The statute defines due diligence as "that degree of attention, continuous directed effort, and timeliness as may reasonably be expected from, and are ordinarily exercised by, a person during a regulatory review period." As provided in § 60.30(c), a due diligence petition "shall set forth sufficient facts, including dates if possible, to merit an investigation by FDA of whether the applicant acted with due diligence." Upon receipt of a due diligence petition, FDA reviews the petition and evaluates whether any change in the regulatory review period is necessary. If so, the corrected regulatory review period is published in the **Federal Register**. A due diligence petitioner not satisfied with FDA's decision regarding the petition may, under § 60.40 (21 CFR 60.40), request an informal hearing for reconsideration of the due diligence determination. Petitioners are likely to include persons or organizations having knowledge that FDA's marketing permission for that product was not actively pursued throughout the regulatory review period. The information collection for which an extension of approval is being sought is the use of the statutorily created due diligence petition.

Since 1992, 12 requests for revision of the regulatory review period have been submitted under § 60.24. For 2007, 2008, and 2009, a total of three, or one per year, have been submitted under § 60.24. Two regulatory review periods have been altered. During that same time period, two due diligence petitions were submitted to FDA under § 60.30, for an average of fewer than one per year. There have been no requests for hearings under § 60.40 regarding the decisions on such petitions; however, for purposes of this information collection approval, we are estimating that we may receive one submission annually.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
60.24(a)	1	100	1	100	100
60.30	1	50	1	50	50
60.40	1	100	1	10	10
Total					160

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: September 30, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–25010 Filed 10–4–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0492]

Agency Information Collection Activities; Proposed Collection; Comment Request; Medical Devices: Recommended Glossary and Educational Outreach to Support Use of Symbols on Labels and in Labeling of In Vitro Diagnostic Devices Intended for Professional Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the reporting requirements for the collection "Recommended Glossary and Educational Outreach to Support Use of Symbols on Labels and in Labeling of In Vitro Diagnostic Devices Intended for Professional Use."

DATES: Submit written or electronic comments on the collection of information by December 6, 2010.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *Daniel.Gittleson@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an

existing collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA'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 respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Medical Devices: Recommended Glossary and Educational Outreach to Support Use of Symbols on Labels and in Labeling of In Vitro Diagnostic Devices Intended for Professional Use (OMB Control Number 0910–0553)—Extension

Section 502 of the Federal Food, Drug and Cosmetic Act (the FD&C Act) (21 U.S.C. 352), among other things, establishes requirements for the label or labeling of a medical device so that it is not misbranded. Section 351 of the Public Health Service Act (the PHS Act) (42 U.S.C. 262) establishes requirements that manufacturers of biological products must submit a license application for FDA review and approval prior to marketing a biological product for introduction into interstate commerce.

In the **Federal Register** of November 30, 2004 (69 FR 69606), FDA published a notice of availability of the guidance entitled "Use of Symbols on Labels and in Labeling of In Vitro Diagnostic Devices Intended for Professional Use." The guidance document provides guidance for the voluntary use of selected symbols in place of text in labeling. It provides the labeling guidance required for: (1) In vitro diagnostic devices (IVDs), intended for professional use under 21 CFR 809.10, FDA's labeling requirements for IVDs and (2) FDA's labeling requirements for biologics, including IVDs under 21 CFR parts 610 and 660. Under section 502(c) of the FD&C Act, a drug or device is misbranded, "* * *If any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use."

The guidance document recommends that a glossary of terms accompany each IVD to define the symbols used on that device's labels and/or labeling. Furthermore, the guidance recommends an educational outreach effort to enhance the understanding of newly introduced symbols. Both the glossary and educational outreach information will help to ensure that IVD users will have enough general familiarity with the symbols used, as well as provide a quick reference for available materials, thereby further ensuring that such labeling satisfies the labeling requirements under section 502(c) of the FD&C Act and section 351 of the PHS Act.

The likely respondents for this collection of information are IVD manufacturers who plan to use the selected symbols in place of text on the labels and/or labeling of their IVDs.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN[1]

Section 502 of the FD&C Act/Section 351 of the PHS Act	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Glossary	689	1	689	4	2,756

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The glossary activity is inclusive of both domestic and foreign IVD manufacturers. FDA receives submissions from approximately 689 IVD manufacturers annually. The number of hours per response for the glossary and educational outreach activities were derived from consultation with a trade association and FDA personnel. The 4-hour estimate for a glossary is based on the average time necessary for a manufacturer to modify the glossary for the specific symbols used in labels or labeling for the IVDs manufactured.

Dated: September 30, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–25008 Filed 10–4–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0161]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Export of Food and Drug Administration Regulated Products: Export Certificates

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by November 4, 2010.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0498. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–

400B, Rockville, MD 20850, 301–796–3794, *Jonnalynn.Capezzuto@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Export of Food and Drug Administration Regulated Products: Export Certificates—(OMB Control Number 0910–0498)—Extension

In April 1996, a law entitled "The FDA Export Reform & Enhancement Act of 1996" (FDAERA) amended sections 801(e) and 802 of the act (21 U.S.C. 381(e) and 382). It was designed to ease restrictions on exportation of unapproved pharmaceuticals, biologics, and devices regulated by FDA. Section 801(e)(4) of the FDAERA provides that persons exporting certain FDA-regulated products may request FDA to certify that the products meet the requirements of 801(e) and 802 or other requirements of the act. This section of the law requires FDA to issue certification within 20 days of receipt of the request and to charge firms up to $175 for the certifications.

This new section of the act authorizes FDA to issue export certificates for regulated pharmaceuticals, biologics, and devices that are legally marketed in the United States, as well as for these same products that are not legally marketed but are acceptable to the importing country, as specified in sections 801(e) and 802 of the act. FDA has developed five types of certificates that satisfy the requirements of section 801(e)(4)(B) of the act: (1) Certificates to Foreign Governments, (2) Certificates of Exportability, (3) Certificates of a Pharmaceutical Product, (4) Non-Clinical Research Use Only Certificates, and (5) Certificates of Free Sale. Table 1 of this document lists the different certificates and details their use:

Type of Certificate	Use
"Supplementary Information Certificate to Foreign Government Requests" "Exporter's Certification Statement Certificate to Foreign Government" "Exporter's Certification Statement Certificate to Foreign Government (For Human Tissue Intended for Transplantation)"	For the export of products legally marketed in the United States
"Supplementary Information Certificate of Exportability Requests" "Exporter's Certification Statement Certificate of Exportability"	For the export of products not approved for marketing in the United States (unapproved products) that meet the requirements of sections 801(e) or 802 of the act
"Supplementary Information Certificate of a Pharmaceutical Product" "Exporter's Certification Statement Certificate of a Pharmaceutical Product"	Conforms to the format established by the World Health Organization and is intended for use by the importing country when the product in question is under consideration for a product license that will authorize its importation and sale or for renewal, extension, amending, or reviewing a license
"Supplementary Information Non-Clinical Research Use Only Certificate" "Exporter's Certification Statement (Non-Clinical Research Use Only)"	For the export of a non-clinical research use only product, material, or component that is not intended for human use which may be marketed in, and legally exported from the United States under the act
Certificate of Free Sale	For food, cosmetic products, and dietary supplements that may be legally marketed in the United States

FDA will continue to rely on self-certification by manufacturers for the first three types of certificates listed in table 1 of this document. Manufacturers are requested to self-certify that they are in compliance with all applicable requirements of the act, not only at the time that they submit their request to the appropriate center, but also at the time that they submit the certification to the foreign government.

The appropriate FDA centers will review product information submitted by firms in support of their certificate and any suspected case of fraud will be referred to FDA's Office of Criminal Investigations for followup. Making or submitting to FDA false statements on any documents may constitute violations of 18 U.S.C. 1001, with penalties including up to $250,000 in fines and up to 5 years imprisonment.

In the **Federal Register** of March 31, 2010 (75 FR 16137), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—TOTAL ESTIMATED ANNUAL REPORTING BURDEN[1]

FDA Center	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Center for Biologics Evaluation and Research	2,114	1	2,114	1	2,114
Center for Drug Evaluation and Research	5,251	1	5,251	2	10,502
Center for Devices and Radiological Health	6,463	1	6,463	2	12,926
Center for Veterinary Medicine	855	1	855	1	855

TABLE 1—TOTAL ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

FDA Center	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Center for Food Safety and Applied Nutrition (Three different product categories)					
	386	2	772	1.5	1,158
	247	47	11,609	2	23,218
	337	1	337	0.5	169
Total	15,653		27,401		50,942

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: September 30, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–25009 Filed 10–4–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0477]

Approval Pathway for Biosimilar and Interchangeable Biological Products; Public Hearing; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public hearing; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a 2-day public hearing to obtain input on specific issues and challenges associated with the implementation of the Biologics Price Competition and Innovation Act of 2009 (BPCI Act). The BPCI Act establishes an abbreviated approval pathway for biological products that are demonstrated to be "highly similar" (biosimilar) to, or "interchangeable" with, an FDA-licensed biological product. The purpose of this public hearing is to create a forum for interested stakeholders to provide input regarding the agency's implementation of the statute. FDA will take the information it obtains from the public hearing into account in its implementation of the BPCI Act.

DATES: The public hearing will be held November 2 and 3, 2010, from 8:30 a.m. to 4:30 p.m. Individuals who wish to present at the public hearing must register on or before October 11, 2010. Section III of this document provides attendance and registration information. Electronic or written comments will be accepted after the public hearing until December 31, 2010.

ADDRESSES: The public hearing will be held at FDA's White Oak Campus, 10903 New Hampshire Ave., Building 31, Rm. 1503, Silver Spring, MD 20993.

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, Room 1061, Rockville, MD 20852. Identify comments with the corresponding docket number found in brackets in the heading of this document.

Transcripts of the public hearing will be available for review at the Division of Dockets Management and on the Internet at *http://www.regulations.gov* approximately 30 days after the public hearing (see Section VI of this document).

A live webcast of this public hearing will be viewable at the following Web addresses on the days of the public hearing: *http://www.fda.gov/Drugs/NewsEvents/ucm221688.htm.* A video record of the public hearing will be available at the same Web addresses for 1 year.

FOR FURTHER INFORMATION CONTACT: Sandra J. Benton, Food and Drug Administration, Center for Drug Evaluation and Research, 10903 New Hampshire Ave., Bldg. 51, Rm. 6340, Silver Spring, MD 20993, 301–796–1042, FAX: 301–847–3529, *E-mail: biosimilarspublicmtg@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On March 23, 2010, President Obama signed into law the Patient Protection and Affordable Care Act (Affordable Care Act) (Pub. L. 111–148). The Affordable Care Act contains a subtitle called the Biologics Price Competition and Innovation Act of 2009 (BPCI Act) that amends the Public Health Service Act (PHS Act) and other statutes to create an abbreviated approval pathway for biological products shown to be biosimilar to, or interchangeable with, an FDA-licensed reference biological product (see sections 7001 through 7003 of the BPCI Act).

The objectives of the BPCI Act are conceptually similar to those of the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (commonly referred to as the "Hatch-Waxman Act"), which established abbreviated pathways for the approval of drug products under the Federal Food, Drug, and Cosmetic Act (FD&C Act). The BPCI Act aligns with FDA's longstanding policy of permitting appropriate reliance on what is already known about a drug, thereby saving time and resources and avoiding unnecessary duplication of human or animal testing. The implementation of an abbreviated approval pathway for biological products can present challenges given the scientific and technical complexities that may be associated with the larger and often more complex structure of biological products, as well as the processes by which such products are manufactured. Most biological products are produced in a living system such as a microorganism, or plant or animal cells, whereas small molecule drugs are typically manufactured through chemical synthesis.

Section 351(k) of the PHS Act (42 U.S.C. 262(k)), added by the BPCI Act, describes the general requirements for an application for a proposed biosimilar biological product and an application or a supplement for a proposed interchangeable biological product.

A biological product may be demonstrated to be "biosimilar" to a biological reference product based upon data derived from analytical studies, animal studies, and a clinical study or studies if the product is shown to be highly similar to the reference product, notwithstanding minor differences in clinically inactive components, and if there are no clinically meaningful differences between the biological product and the reference product in terms of safety, purity and potency.

To meet the higher standard of "interchangeability," a product must demonstrate that it can be expected to produce the same clinical result as the reference product in any given patient and, if the biological product is administered more than once to an individual, the risk in terms of safety or diminished efficacy of alternating or switching between the use of the biological product and the reference product is not greater than the risk of using the reference product without such alternation or switch. Interchangeable products may be substituted for the reference product by a pharmacist without the intervention of the prescribing health care provider.

The BPCI Act also includes, among other provisions: A 12-year period of marketing exclusivity from the date of first licensure of the reference product, during which approval of a 351(k) application referencing that product cannot be made effective; an exclusivity period for the first biological product submitted in a 351(k) application that has been determined to be interchangeable with the reference product for any condition of use, during which a second or subsequent biological product may not be determined interchangeable to that reference product; and a transition provision for protein products that have been or will be approved under section 505 of the FD&C Act (21 U.S.C. 355) prior to March 23, 2020.

The BPCI Act also requires that FDA develop recommendations to present to Congress with respect to a user fee program for biosimilar and interchangeable biological products. Such recommendations must address the goals for the process of reviewing 351(k) applications, and plans for meeting those goals, for fiscal years (FY) 2013 to 2017. In developing such recommendations, FDA is required to consult with the Committee on Health, Education, Labor, and Pensions of the Senate; the Committee on Energy and Commerce of the House of Representatives; scientific and academic experts; healthcare professionals; representatives of patient and consumer advocacy groups; and regulated industry.

The BPCI Act also establishes procedures for identifying and resolving patent disputes involving applications submitted under section 351(k) of the PHS Act; these procedures do not involve FDA and are not within the scope of this public hearing.

II. Purpose and Scope of the Public Hearing

The purpose of this part 15 hearing is to receive information and comments from a broad group of stakeholders, such as healthcare professionals, healthcare institutions, manufacturers of biomedical products, interested industry and professional associations, patients and patient associations, third party payers, current and prospective biological license application (BLA) and new drug application (NDA) holders, and the public, regarding implementation of the BPCI Act.

To prepare to begin negotiations with regulated industry regarding a user fee program, FDA must identify which companies and trade associations would be affected by a user fee program for biosimilar and interchangeable biological products (*i.e.,* a company likely to submit an application for approval of a biosimilar or interchangeable biological product).

The purpose of this public hearing is to create a forum for interested stakeholders to provide input regarding the agency's implementation of the statute concerning the following issues, among others: Scientific and technical factors related to a determination of biosimilarity or interchangeability; the type of information that may be used to support a determination of biosimilarity or interchangeability; development of a framework for optimal pharmacovigilance for biosimilar and interchangeable biological products; scope of the revised definition of a "biological product"; priorities for guidance development; scientific and technical factors related to reference product exclusivity; scientific and technical factors that may inform the agency's interpretation of "product class" as it relates to available regulatory pathways for certain protein products during the 10-year transition period following enactment of the BPCI Act; and the establishment of a user fee program for biosimilar and interchangeable biological products.

FDA is particularly interested in obtaining information and public comment on the following issues, although any comments on any issues related to biosimilar or interchangeable biological products are welcome.

A. Biosimilarity

Section 351(k) of the PHS Act as set forth in the BPCI Act requires, among other things, that an application for a proposed biosimilar product include information demonstrating that the proposed product is biosimilar to a reference product based upon data derived from:

- Analytical studies that demonstrate that the biological product is highly similar to the reference product notwithstanding minor differences in clinically inactive components;
- Animal studies (including the assessment of toxicity); and
- A clinical study or studies (including the assessment of immunogenicity and pharmacokinetics or pharmacodynamics) that are sufficient to demonstrate safety, purity, and potency in one or more appropriate conditions of use for which the reference product is licensed.

The BPCI Act provides that FDA may determine, at its discretion, that an element described previously is unnecessary in a 351(k) application.

FDA seeks comments on the following issues:

1. What scientific and technical factors should the agency consider in determining whether the biological product is highly similar to the reference product notwithstanding minor differences in clinically inactive components?
2. What scientific and technical factors should the agency consider in determining the appropriate analytical, animal, and clinical study or studies to assess the nature and impact of actual or potential structural differences between the proposed biosimilar product and the reference product?
3. What range of structural differences between a proposed biosimilar product and the reference product is consistent with the standard "highly similar" and may be acceptable in a 351(k) application if the applicant can demonstrate the absence of any clinically meaningful differences between the proposed biosimilar product and the reference product?
4. Under what circumstances should the agency consider finding that animal studies or a clinical study or studies are "unnecessary" for submission of a 351(k) application?

B. Interchangeability

Section 351(k)(4) of the PHS Act requires that an application for a proposed interchangeable product contain information sufficient to demonstrate:

- The biological product is biosimilar to the reference product; and
- The biological product can be expected to produce the same clinical result as the reference product in any given patient; and
- For a biological product that is administered more than once to an

individual, the risk in terms of safety or diminished efficacy of alternating or switching between use of the biological product and the reference product is not greater than the risk of using the reference product without such alternation or switch.

FDA seeks input on the following issues related to interchangeability:

1. What factors should the agency consider in determining whether a proposed interchangeable biological product can be "expected to produce the same clinical result as the reference product in any given patient?"

2. What factors should the agency consider in evaluating the potential risk related to alternating or switching between use of the proposed interchangeable biological product and the reference product or among interchangeable biological products?

C. Patient Safety and Pharmacovigilance

The agency considers the safety of patients who are taking any medical products to be of paramount importance. To that end and to protect each individual patient, the agency is developing a framework for optimal pharmacovigilance for biosimilar and interchangeable products that is informed by our current experience and industry best practices. In the interest of patient safety and for the purpose of pharmacovigilance, the agency must be able to distinguish between a reference product, a related biological product that has not been demonstrated to be biosimilar, a biosimilar product, and an interchangeable product.

FDA seeks comments on the following issues:

1. What factors unique to proposed biosimilar or interchangeable biological products and their use should the agency consider in developing its pharmacovigilance program for such products?

2. What approaches can be undertaken by the agency, industry, or health care community to ensure appropriate pharmacovigilance for biosimilar and interchangeable products?

3. If each product were given a unique nonproprietary name, should a distinguishing prefix or suffix be added to the nonproprietary name for a related biological product that has not been demonstrated to be biosimilar, a biosimilar product, or an interchangeable product to facilitate pharmacovigilance? What factors should be considered to reduce any negative impact on the healthcare delivery system related to unique nonproprietary names for highly similar biological products?

4. What safeguards should the agency consider to assist the healthcare community when prescribing, administering, and dispensing biological products to prevent unsafe substitution of biological products?

5. What are some mechanisms that FDA may consider to communicate findings that a particular product is or is not biosimilar to or interchangeable with a given reference product?

D. The Use of Supportive Data and Information

The BPCI Act provides that an application for the licensure of a biosimilar or interchangeable product: Shall include publicly available information regarding the Secretary's (Department of Health and Human Services) previous determination that the reference product is safe, pure, and potent; and may include any additional information in support of the application, including publicly available information with respect to the reference product or another biological product (section 351(k)(2)(A)(iii) of the PHS Act).

The BPCI Act defines the term "reference product" to mean "the single biological product licensed under [section 351(a)] against which a biological product is evaluated in an application submitted under [section 351(k)]." Accordingly, section 351(k) requires that an applicant demonstrate biosimilarity to and or interchangeability with a reference product licensed by FDA (as distinguished from a biological product licensed by a foreign regulatory authority).

The agency is aware that some prospective biosimilar sponsors have conducted animal and/or clinical studies to support regulatory approval in another jurisdiction using a non-U.S.-licensed biological product as a comparator. To avoid duplicative animal and human testing, sponsors may wish, to the extent permissible, to rely on these studies to support a 351(k) application.

FDA seeks comments on the following issue: From a scientific perspective, to what extent, if any, should animal or clinical data comparing a proposed biosimilar product with a non-U.S.-licensed comparator product be used to support a demonstration of biosimilarity to a U.S.-licensed reference product? What type of bridging data or information would be needed to scientifically justify the relevance of the comparative data?

E. Definition of a Biological Product

The BPCI Act changes the statutory authority under which certain protein products will be regulated by amending the definition of "biological product" in section 351(i) of the PHS Act to include a protein (except any chemically synthesized polypeptide) before the phrase "or analogous product." In light of the absence of scientific consensus on the distinction between the categories of "protein" and "polypeptide" or "peptide," FDA may establish a regulatory definition of "protein" and "any chemically synthesized polypeptide" to clarify the authority under which such products will be licensed and regulated and, to the extent possible, avoid the conflicting regulation of certain products (*i.e.,* those that are manufactured through either synthetic and recombinant technology) under different authorities.

FDA seeks comments on the following issues:

1. What scientific and technical factors should FDA consider if it develops a regulatory definition for the category of "protein" (as distinguished from peptide or polypeptide)?

2. What scientific and technical factors should FDA consider if it develops a regulatory definition for the category of "any chemically synthesized polypeptide"?

F. Guidances

Although the issuance or nonissuance of guidance does not preclude submission or agency review of, or action on, a 351(k) application, we are interested in obtaining public input regarding priorities for issuing guidance documents for industry (*see* section 351(k)(8) of the PHS Act).

FDA seeks comments on the following issues:

1. What types of guidance documents for industry should be a priority for the agency during the early period of implementation?

2. Section 351(k)(8)(E) of the PHS Act permits the agency to indicate in a guidance document that the science and experience, as of the date of the guidance document, with respect to a product or product class (not including any recombinant protein) does not allow approval of a 351(k) application for such a product or product class. What scientific and technical factors should the agency consider in determining if the existing science and experience are sufficient to allow approval for a product or product class under section 351(k) of the PHS Act?

G. Exclusivity

The BPCI Act provides for a 12-year period of marketing exclusivity from the date of first licensure of the reference biological product, during which approval of a 351(k) application cannot be made effective (*see* section 351(k)(7) of the PHS Act). The date of first licensure does not apply to a license for or approval of:

- A supplement for the biological product that is the reference product; or
- A subsequent application filed by the same sponsor or manufacturer of the biological product that is the reference product (or a related entity) for a change (not including a modification to the structure of the biological product) that results in a new indication, route of administration, dosing schedule, dosage form, delivery system, delivery device, or strength; or
- A subsequent application filed by the same sponsor or manufacturer of the biological product that is the reference product (or a related entity) for a modification to the structure of the biological product that does not result in a change in safety, purity, or potency (*see* section 351(k)(7)(C) of the PHS Act).

FDA seeks comments on the following issues:

1. In light of the potential transfer of BLAs from one corporate entity to another and the complexities of corporate and business relationships, what factors should the agency consider in determining the types of related entities that may be ineligible for a period of 12-year exclusivity for a subsequent BLA?

2. What factors should the agency consider in determining whether a modification to the structure of the licensed reference biological product results in a change in safety, purity, or potency, such that a subsequent BLA may be eligible for a second 12-year period of marketing exclusivity?

H. Transition Provisions

The BPCI Act requires that an application for a biological product, which now includes the category of "protein (except any chemically synthesized polypeptide)," must be submitted under section 351 of the PHS Act, rather than under section 505 of the FD&C Act. However, the BPCI Act provides an exception for certain biological products that are in a "product class" for which an application has been approved under section 505 of the FD&C Act prior to March 23, 2010. An application for a biological product in these product classes may be submitted under section 505 of the FD&C Act until March 23, 2020, unless there is another biological product licensed under section 351(a) of the PHS Act that could serve as the reference product for the application, if the application were submitted under section 351(k) of the PHS Act (see section 7002(e) of the BPCI Act).

FDA seeks comments on the following issues:

1. What scientific factors should FDA consider in defining and applying "product class" for purposes of determining which applications for biological products may be submitted under the FD&C Act during the 10-year transition period?

2. What scientific factors should FDA consider in determining whether another biological product approved under section 351(a) of the PHS Act could serve as the reference product for an application submitted under section 351(k) of the PHS Act?

I. User Fees

The BPCI Act amends section 735 of the FD&C Act (21 U.S.C. 379g) to include 351(k) applications in the definition of a "human drug application" for the purposes of the prescription drug user fee provisions (*see* section 7002(f)(3) of the BPCI Act). The BPCI Act requires FDA to develop recommendations to present to Congress by January 15, 2012, for goals for the process of reviewing 351(k) applications, and plans for meeting those goals, for the first five fiscal years after FY 2012 (see section 7002(f)(3) of the BPCI Act).

FDA seeks comments on the following issues:

1. If the existing fee structure under the Prescription Drug User Fee Act (PDUFA) were to be considered as a model in establishing a user fee structure for applications and supplements for proposed biosimilar and interchangeable biological products, what factors and changes should FDA take into consideration, and why?

2. What factors should FDA take into account when considering whether to recommend that user fees for biosimilar and interchangeable biological products should also be used to monitor safety after approval?

In addition, FDA seeks to identify potential participants in any negotiations of user fee programs for biosimilar and interchangeable biological products, specifically companies that would be affected by such a user fee program and industry associations representing such companies. FDA requests that commenters identify these potential participants by sending to *Biosimilars UserFeeProgram@fda.hhs.gov* the following information regarding any company that may be subject to a user fee program for biosimilar and interchangeable biological products, or any industry association representing such companies: The name of the entity; contact person; e-mail address; and a phone number.

III. Attendance and Registration

The FDA Conference Center at the White Oak location is a Federal facility with security procedures and limited seating. Attendance is free and will be on a first-come, first-served basis. Individuals who wish to present at the public hearing must register by sending an e-mail to *biosimilarspublicmtg@fda.hhs.gov* on or before October 11, 2010, and provide complete contact information, including name, title, affiliation, address, e-mail, and phone number. Those without e-mail access may register by contacting Sandra Benton (*see* **FOR FURTHER INFORMATION CONTACT**). FDA has included questions for comment in section II of this document. You should identify the section and the number of each question you wish to address in your presentation, so that FDA can consider that in organizing the presentations. Individuals and organizations with common interests should consolidate or coordinate their presentations and request time for a joint presentation. FDA will do its best to accommodate requests to speak and will determine the amount of time allotted for each oral presentation, and the approximate time that each oral presentation is scheduled to begin. FDA will notify registered presenters of their scheduled times, and make available an agenda at *http://www.fda.gov/Drugs/NewsEvents/ucm221688.htm* approximately 2 weeks prior to the public hearing. Once FDA notifies registered presenters of their scheduled times, presenters should submit to FDA an electronic copy of their presentation to *biosimilarspublicmtg@fda.hhs.gov* on or before October 27, 2010.

If you need special accommodations because of disability, please contact Sandra Benton, (*see* **FOR FURTHER INFORMATION CONTACT**) at least 7 days before the meeting.

A live Webcast of this public hearing will be viewable at the following Web addresses on the days of the public hearing: *http://www.fda.gov/Drugs/NewsEvents/ucm221688.htm.* A video record of the public hearing will be available at the same Web addresses for one year.

IV. Notice of Hearing Under 21 CFR Part 15

The Commissioner of Food and Drugs is announcing that the public hearing will be held in accordance with part 15 (21 CFR part 15). The hearing will be conducted by a presiding officer, who will be accompanied by FDA senior management from the Office of the Commissioner and the Center for Drug Evaluation and Research.

Under § 15.30(f), the hearing is informal and the rules of evidence do not apply. No participant may interrupt the presentation of another participant. Only the presiding officer and panel members may question any person during or at the conclusion of each presentation. Public hearings under part 15 are subject to FDA's policy and procedures for electronic media coverage of FDA's public administrative proceedings (part 10, subpart C (21 CFR part 10, subpart C)). Under § 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants. The hearing will be transcribed as stipulated in § 15.30(b) (see section VI of this document). To the extent that the conditions for the hearing, as described in this notice, conflict with any provisions set out in part 15, this notice acts as a waiver of those provisions as specified in § 15.30(h).

V. Request for Comments

Regardless of attendance at the public hearing, interested persons may submit either electronic or written comments to the Division of Dockets Management (*see* **ADDRESSES**). 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.

VI. Transcripts

Transcripts of the public hearing will be available for review at the Division of Dockets Management (*see* **ADDRESSES**) and on the Internet at http://www.regulations.gov approximately 30 days after the public hearing. A transcript will also be made available in either hard copy or on CD–ROM, upon 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, Room 6–30, Rockville, MD 20857.

Dated: September 29, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–24853 Filed 10–4–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0496]

Cooperative Agreement To Support Capacity Building Activities Through the World Health Organization Global Foodborne Infections Network

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its intention to accept and consider a single source application to award a cooperative agreement to the World Health Organization (WHO) Advisory Group on Integrated Surveillance of Antimicrobial Resistance (AGISAR) and in support of the WHO Global Foodborne Infections Network (GFN) and to provide guidance to the WHO on a framework for the development of an international network to promote and enhance collaboration on harmonization and data sharing among countries with Antimicrobial Resistance (AMR) surveillance programs.

FOR FURTHER INFORMATION AND ADDITIONAL REQUIREMENTS CONTACT:

Program Contact: Patrick McDermott, Division of Animal and Food Microbiology, Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Mod II, rm. 1505, Rockville, MD 20855, 301–210–4213, FAX: 301–210–4685, email: *Patrick.McDermott@fda.hhs.gov*.

Management Contact: Katherine C. Bond, Office of International Programs, Office of the Commissioner, FDA, White Oak Bldg. 32, rm. 3300, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–8318, FAX: 301–595–5058, email: *Katherine.Bond@fda.hhs.gov*.

Grants Contact: Kimberly Pendleton, Division of Acquisition and Grants, FDA, 5630 Fishers Lane (HFA–500), rm. 2104, Rockville, MD 20857, 301–827–9363, FAX: 301–827–7101, email: *kimberly.pendleton@fda.hhs.gov*.

For more information on this funding opportunity announcement (FOA) and to obtain detailed requirements, please contact Kimberly Pendleton.

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

[RFA–FD–10–006]

[Catalog of Federal Domestic Assistance Number(s): 93.103 *https://www.cfda.gov*]

A. Background

The Food and Drug Administration (FDA) is announcing its intention to accept and consider a single source application for a cooperative agreement to the WHO GFN. This project represents a collaborative agreement between the WHO and FDA aimed at capacity building in laboratory based surveillance of foodborne pathogens and disease in developing regions to support AGISAR and GFN to enable FDA to realize its goal of developing an international database for human and animal isolates of foodborne pathogens and their susceptibility profiles.

B. Research Objectives

- Support WHO capacity building activities with member countries for AMR monitoring (development of AMR training modules for GFN training courses, and hosting of visiting scientist from developing countries).
- Develop harmonized schemes for monitoring antimicrobial resistance in zoonotic and enteric bacteria to include appropriate sampling.
- Promote information sharing on AMR (development of a global AMR databank).
- Provide expert advice to WHO, and promote WHO and FDA collaborative work to advise WHO Member States on containment of AMR with a particular focus to Human Critically Important Antimicrobials. AGISAR should be the core advisory group to review criteria for ranking human and animal antimicrobials to be reviewed by WHO; and FDA's resources could be used in support of AGISAR's participation.
- Support and advise WHO on selection of sentinel sites to be strategically identified around the globe and designing pilot projects to conduct integrated surveillance of antimicrobial resistance.
- Promote development of standardized methods for monitoring antimicrobial use and work with member states for the implementation of these methods at the country-level.
- Promote the development of published articles on the emergence of AMR threats and challenges, and the

need for AMR surveillance with a forward-look toward sustainable solutions through global collaboration and evidence-based approaches.

C. Eligibility Information

The following organizations/institutions are eligible to apply: The World Health Organization

II. Award Information/Funds Available

A. Award Amount

FDA anticipates providing one award of $847,500 (total costs including indirect costs) in fiscal year (FY) 2010 in support of this project. Subject to the availability of funds and successful performance, 2 additional years of support up to $565,000 per year will be available.

B. Length of Support

The support will be 1 year with the possibility of an additional 2 years of noncompetitive support. Continuation beyond the first year will be based on satisfactory performance during the preceding year, receipt of a non-competing continuation application and available Federal FY appropriations.

Dated: September 29, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–24903 Filed 10–4–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0495]

Cooperative Agreement With the Pan American Health Organization for the Development of an Information Hub for Medical Products and Related Regulatory Processes and Systems in the Americas Region

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces its intention to accept and consider a single source application to award a cooperative agreement to the Pan American Health Organization (PAHO) for the development of an information hub in the areas of medical products and related regulatory processes and systems (e.g., including drugs, biologics, vaccines, medical devices, and other medical products as appropriate) in the region of the Americas.

FOR FURTHER INFORMATION CONTACT:

Management Contact: Katherine C. Bond, Office of International Programs, Office of the Commissioner, Food and Drug Administration, White Oak Bldg. 32, rm. 3300, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–8318, FAX: 301–595–5058, email: *Katherine.Bond@fda.hhs.gov*.

Grants Contact: Kimberly Pendleton, Division of Acquisition and Grants (HFA–500), Food and Drug Administration, 5630 Fishers Lane, rm. 2104, Rockville, MD 20857, 301–827–9363, FAX: 301–827–7101, email: *kimberly.pendleton@fda.hhs.gov*.

For more information on this funding opportunity announcement (FOA) and to obtain detailed requirements, please contact Kimberly Pendleton.

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

RFA–FD–10–009
Catalog of Federal Domestic Assistance Number(s): 93.103 *https://www.cfda.gov*

A. Background

FDA announces its intention to accept and consider a single source application to award a cooperative agreement to the PAHO for the development of an information hub in the areas of medical products and related regulatory processes and systems (e.g., including drugs, biologics, vaccines, medical devices, and other medical products as appropriate) in the region of the Americas.

B. Research Objectives

- The development of an online database (e.g., Web-based) in English and Spanish for a series of countries providing:
  - Overview of the regulated sector including description and specific data relating to the medical products and related regulatory processes and systems market;
  - Structural overview of the national regulatory process(es) including information relating to national entities participating in the regulatory process;
  - Data presented by specific regulatory areas (for example, biologics, vaccines, drugs, medical devices) on processes relating to product registration, licensing (manufacturer, wholesaler and pharmacy/vendor), quality control assessment and postmarketing surveillance;
  - Data presented on other regulatory areas such as clinical trials and supply chains;
  - Key regulations governing the areas of medical products and related regulatory processes and systems (e.g., including drugs, biologics, vaccines, medical devices, and other medical products as appropriate) per country and/or links to sources where such information is available.
  - Data collected and presented in such a way that ensures consistency of terminology, consistency in data collection methods, and robustness, comprehensiveness, and comparability of data.
- The establishment of information exchange mechanisms with the active participation of national regulatory agencies (NRAs) in the region of the Americas that facilitates the process by which the information hub and database is populated with information that is reviewed and maintained in an up-to-date and continual basis.
  - A detailed mechanism to maintain and update the hub information is developed detailing the responsibilities of PAHO and its Members States in keeping the data and information contained therein relevant, up-to-date, and comprehensive to encompass the future growth and complexity in the areas of medical products and related regulatory processes and systems.
- As appropriate, PAHO would work to align or link the information hub with other ongoing global initiatives of the World Health Organization (WHO) or its regional offices in regulatory aspects relating to medical products and related regulatory processes and systems.
- As appropriate, PAHO would work to enable effective linkage(s) of the information hub with other ongoing initiatives in regulatory aspects relating to medical products and related regulatory processes and systems including harmonization efforts, such as the Pan American Network for Drug Regulatory Harmonization (PANDRH), the ICH Global Cooperation Group; the Global Health Task Force on Health Technologies; the Asia-Pacific Economic Cooperation (APEC) harmonization efforts, and other relevant efforts and initiatives as appropriate.
- The utilization of the data and information contained within the information hub by NRAs to enable harmonized approaches, standards and guidelines for regulatory systems. It will support evidence-based decisionmaking by NRAs and regulated industry sectors, facilitate the exchange of timely and accurate data, and promote transparency of regulated approaches and efforts.

• As appropriate, explore with the WHO, the possibility of expanding this information hub to other WHO Regions.

C. Eligibility Information

The following organizations/institutions are eligible to apply: the PAHO.

II. Award Information/Funds Available

A. Award Amount

FDA anticipates providing one award of $904,000 (total costs including indirect costs) in FY 2010 in support of this project.

B. Length of Support

The support will be 1 year with the possibility of an additional 3 years of noncompetitive support. Continuation beyond the first year will be based on satisfactory performance during the preceding year, receipt of a non-competing continuation application and available Federal FY appropriations.

Dated: September 29, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–24906 Filed 10–4–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0494]

Cooperative Agreement With the World Health Organization for a Plan to Develop a Global Integrated Food Safety Information Platform

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces its intention to accept and consider a single source application for awarding a cooperative agreement to the World Health Organization (WHO), Department of Food Safety and Zoonoses, to develop a plan for a global integrated food safety information system or platform in partnership with the WHO Secretariat and the Member States.

FOR FURTHER INFORMATION CONTACT:

Management Contact: Katherine C. Bond, Office of International Programs, Office of the Commissioner, Food and Drug Administration, White Oak Bldg. 32, rm. 3300, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–8318, FAX: 301–595–5058, email: *Katherine.Bond@fda.hhs.gov*.

Grants Contact: Kimberly Pendleton, Division of Acquisition and Grants (HFA–500), Food and Drug Administration, 5630 Fishers Lane, rm. 2104, Rockville, MD 20857, 301–827–9363, FAX: 301–827–7101, email: *kimberly.pendleton@fda.hhs.gov*.

For more information on this funding opportunity announcement (FOA) and to obtain detailed requirements, please contact Kimberly Pendleton.

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

RFA–FD–10–009

Catalog of Federal Domestic Assistance Number(s): 93.103 *https://www.cfda.gov*

A. Background

FDA announces its intention to accept and consider a single source application for awarding a cooperative agreement to the WHO, Department of Food Safety and Zoonoses to develop a plan for a global integrated food safety information system or platform in partnership with the WHO Secretariat and the Member States. This project represents a collaborative agreement between WHO and FDA in support of global solutions to address food safety problems; global sharing of comparable food safety data and information; and improved global capacity for detection of and response to food safety threats through preventative controls, data and surveillance and risk-based approaches.

B. Research Objectives

• Outreach to parties who have information needs and information to share to ascertain their interests and to cultivate their support;

• Engagement of all relevant parties in defining the goals and designing the system to maximize utilization and sustainability;

• A timeline for development, design, pilot-testing, implementation and maintenance of a global integrated information platform;

• A business plan that delineates the commitment, support and resources of the WHO Secretariat and relevant stakeholders essential to ensure full implementation and long-term sustainability; and

• A clear articulation of the benefits, measurable outputs and impacts that would result from a WHO global integrated information platform to the global community, Member States and other relevant parties and stakeholders.

C. Eligibility Information

The following organizations/institutions are eligible to apply: The WHO.

II. Award Information/Funds Available

A. Award Amount

FDA anticipates providing one award of $395,500 (total costs including indirect costs) in fiscal year (FY) 2010 in support of this project.

B. Length of Support

The total project period for an application submitted in response to this funding opportunity may not exceed 1 year.

Dated: September 29, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–24904 Filed 10–4–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–P–0338]

Determination That AZDONE (Hydrocodone Bitartrate and Aspirin) Tablet, 5 Milligrams/500 Milligrams, Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that AZDONE (hydrocodone bitartrate and aspirin) Tablet, 5 milligrams (mg)/500 mg, was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for hydrocodone bitartrate and aspirin tablet, 5 mg/500 mg, if all other legal and regulatory requirements are met.

FOR FURTHER INFORMATION CONTACT: Deborah Livornese, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6306, Silver Spring, MD 20993–0002, 301–796–0719.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA

applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the "listed drug," which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA). The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the "Approved Drug Products With Therapeutic Equivalence Evaluations," which is known generally as the "Orange Book." Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162). Under § 314.161(a)(1) (21 CFR 314.161(a)(1)), the Agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved. FDA may not approve an ANDA that does not refer to a listed drug.

AZDONE (hydrocodone bitartrate and aspirin) Tablet, 5 mg/500 mg, is the subject of ANDA 89–420, held by Schwarz Pharma, Inc., and initially approved on January 25, 1988. AZDONE is indicated for the relief of moderate to moderately severe pain. AZDONE (hydrocodone bitartrate and aspirin) Tablet, 5 mg/500 mg is currently listed in the "Discontinued Drug Product List" section of the Orange Book.

Lachman Consultant Services, Inc., submitted a citizen petition dated June 23, 2010 (Docket No. FDA–2010–P–0338), under 21 CFR 10.30, requesting that the Agency determine whether AZDONE (hydrocodone bitartrate and aspirin) Tablet, 5 mg/500 mg, was withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing Agency records, FDA has determined under § 314.161 that AZDONE (hydrocodone bitartrate and aspirin) Tablet, 5 mg/500 mg was not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that AZDONE (hydrocodone bitartrate and aspirin) Tablet, 5 mg/500 mg, was withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of AZDONE (hydrocodone bitartrate and aspirin) Tablet, 5 mg/500 mg, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events and have found no information that would indicate that this product was withdrawn from sale for reasons of safety or effectiveness. Accordingly, the Agency will continue to list AZDONE (hydrocodone bitartrate and aspirin) Tablet, 5 mg/500 mg, in the "Discontinued Drug Product List" section of the Orange Book. The "Discontinued Drug Product List" delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to AZDONE (hydrocodone bitartrate and aspirin) Tablet, 5 mg/500 mg, may be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: September 29, 2010.

David Dorsey,

Acting Deputy Commissioner for Policy, Planning and Budget.

[FR Doc. 2010–24902 Filed 10–4–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0497]

Global Implementation of the Veterinary Medicinal Products Guidelines

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces its intention to accept and consider a single source application for a cooperative agreement to the World Organization for Animal Health (OIE). The OIE is the intergovernmental organization responsible for improving animal health worldwide and is recognized by the World Trade Organization (WTO) as a reference for international sanitary rules, with 175 Member Countries and Territories. The purpose of this agreement is to continue outreach that began in fiscal year (FY) 2009 to expand capacity building to support OIE's services and activities that are needed to carry out OIE's Veterinary International Conference on Harmonization (VICH) Global Outreach to disseminate and implement VICH guidelines at the country level.

FOR FURTHER INFORMATION CONTACT:

Program Contact: Merton V. Smith, Center for Veterinary Medicine (HFV–1), Food and Drug Administration, 7519 Standish Pl., rm. 177, Rockville, MD 20855, 240–276–9025, FAX: 240–276–9030, email: *Merton.Smith@fda.hhs.gov*.

Management Contact: Katherine C. Bond, Office of the Commissioner, Food and Drug Administration, White Oak Bldg. 32, rm. 3300, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–8318, FAX: 301–595–5058, email: *Katherine.Bond@fda.hhs.gov*.

Grants Contact: Kimberly Pendleton, Division of Acquisition and Grants (HFA–500), Food and Drug Administration, 5630 Fishers Lane, rm. 2104, Rockville, MD 20857, 301–827–9363, FAX: 301–827–7101, email: *kimberly.pendleton@fda.hhs.gov*.

For more information on this funding opportunity announcement (FOA) and to obtain detailed requirements, please contact Kimberly Pendleton.

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

RFA–FD–10–010

Catalog of Federal Domestic Assistance Number(s): 93.103 *https://www.cfda.gov*

A. Background

FDA announces its intention to accept and consider a single source application for award of a cooperative agreement to the OIE in support of international technical capacity building activities that help to assure that U.S. imports of veterinary medicinal products are safe, effective, and of high quality and that food from treated animals is safe and wholesome; to assist foreign regulators in developing and using rigorous safety standards; to develop and foster mutually beneficial regulatory partnerships; and to leverage resources for capacity building through appropriate training and other activities.

B. Research Objectives

- Promote and enhance in OIE Members good veterinary governance, which includes the compliance of Veterinary Services with OIE

international standards, as an instrumental and essential prerequisite to the establishment and effective implementation of adequate and appropriate legislation covering all aspects of products for veterinary use, including registration, quality control, distribution, monitoring of quantities and final use.

• Develop and improve international and regional cooperation in the establishment and enforcement of legislation to harmonize the regulatory framework between OIE Member States so as to assist countries in need to effectively institute and maintain such mechanisms.

• Encourage countries to allocate appropriate human and financial resources to veterinary services and laboratories to correctly implement the OIE standards and guidelines related to veterinary products and their control.

• Enhance capacities of national focal points for OIE on matters related to veterinary products according to the suggested terms of reference and encourage his/her participation in training sessions and appropriate international gatherings and meetings.

• Promote the responsible and prudent use of veterinary medicinal products, in particular of antimicrobials used in veterinary medicine, and the monitoring of the quantities used and potential existence or development of antimicrobial resistance in disease-causing organisms affecting both humans and animals.

• Actively encourage the recognition and application of the international recommendations, guidelines and tools developed by the OIE and adopted by the World Assembly of Delegates on veterinary products.

C. Eligibility Information

The following organizations/institutions are eligible to apply: The OIE.

II. Award Information/Funds Available

A. Award Amount

FDA anticipates providing one award of $565,000 (total costs including indirect costs) in fiscal year (FY) 2010 in support of this project. Subject to the availability of funds and successful performance, 1 additional year of support up to $565,000 per year will be available.

B. Length of Support

The support will be 1 year with the possibility of an additional year of noncompetitive support. Continuation beyond the first year will be based on satisfactory performance during the preceding year, receipt of a non-competing continuation application and available Federal FY appropriations.

Dated: September 29, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–24905 Filed 10–4–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Listing of Members of the National Institutes of Health's Senior Executive Service 2010 Performance Review Board (PRB)

The National Institutes of Health (NIH) announces the persons who will serve on the National Institutes of Health's Senior Executive Service 2010 Performance Review Board. This action is being taken in accordance with Title 5, U.S.C., 4314(c)(4), which requires that members of performance review boards be appointed in a manner to ensure consistency, stability, and objectivity in performance appraisals and requires that notice of the appointment of an individual to serve as a member be published in the **Federal Register**.

The following persons will serve on the NIH Performance Review Board, which oversees the evaluation of performance appraisals of NIH Senior Executive Service (SES) members:

Ms. Colleen Barros (Chair), Dr. Michael Gottesman, Ms. Lenora Johnson, Ms. Robin Kawazoe, Dr. Sally Rockey, Dr. Lawrence Tabak, Dr. Samir Zakhari.

For further information about the NIH Performance Review Board, contact the Office of Human Resources, Workforce Relations Division, National Institutes of Health, Building 31, Room B3C07, Bethesda, Maryland 20892, telephone 301–402–9203 (not a toll-free number).

Dated: September 27, 2010.

Francis S. Collins,

Director, National Institutes of Health.

[FR Doc. 2010–24929 Filed 10–4–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee to the Director (ACD), Centers for Disease Control and Prevention (CDC)—Health Disparities Subcommittee (HDS)

Correction: This notice was published in the **Federal Register** on September 1, 2010, Volume 75, Number 169, page 53703. A quorum of the subcommittee's membership was not able to participate; therefore, the meeting was adjourned. The subcommittee will reconvene as follows:

Time and Date: 2 p.m.–3 p.m., October 21, 2010.

Place: Teleconference.

Status: Open to the public. Teleconference access limited only by the availability of telephone ports. The public is welcome to participate during the public comment period, which is tentatively scheduled from 2:45 p.m. to 2:50 p.m. To participate in the teleconference please dial (877) 394–7734 and enter conference code 9363147.

Purpose: The Subcommittee will provide recommendations for consideration to the ACD on strategic and other broad issues facing CDC.

Matters To Be Discussed: Policy brief on health equity and social determinants of health; update on collaboration with the CDC Health Equity Workgroup; CDC Director's Annual Health Disparity Report; and briefing on the realignment of the CDC Office of Minority Health and Health Disparities. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Walter W. Williams, M.D., M.P.H., Designated Federal Officer, HDS, ACD, CDC, 1600 Clifton Road, NE., M/S E–67, Atlanta, Georgia 30333. Telephone (404) 498–2310, E-mail: *http://www1@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: September 29, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–24911 Filed 10–4–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Immunization Practices (ACIP)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned committee:

Times and Dates: 8 a.m.–6 p.m., October 27, 2010; 8 a.m.–5 p.m., October 28, 2010.

Place: CDC, Tom Harkin Global Communications Center, 1600 Clifton Road, NE., Building 19, Kent "Oz" Nelson Auditorium, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The committee is charged with advising the Director, CDC, on the appropriate uses of immunizing agents. In addition, under 42 U.S.C. 1396s, the committee is mandated to establish and periodically review and, as appropriate, revise the list of vaccines for administration to vaccine-eligible children through the Vaccines for Children (VFC) program, along with schedules regarding the appropriate periodicity, dosage, and contraindications applicable to the vaccines.

Matters To Be Discussed: The agenda will include discussions on: Evidence based recommendations; Human Papillomavirus (HPV) vaccines; Meningococcal vaccine; Hepatitis vaccines; vaccine supply update; RSV Immunoprophylaxis; Rotavirus vaccines; Pertussis vaccine; Influenza vaccines; the 2011 Immunization Schedule for adults, children & adolescents; and the Herpes Zoster vaccine. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Leola Mitchell, National Center for Immunization and Respiratory Diseases, CDC, 1600 Clifton Road, NE., Mailstop E–05, Atlanta, Georgia 30333, Telephone (404) 639–8836, Fax (404) 639–8905. The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the CDC and Agency for Toxic Substances and Disease Registry.

Dated: September 27, 2010.

Elaine Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–25012 Filed 10–4–10; 8:45 am]

BILLING CODE 4160–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

Gastrointestinal Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Gastrointestinal Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on November 4, 2010, from 8 a.m. to 5 p.m.

Location: Hilton Washington DC North/Gaithersburg, The Ballroom, 620 Perry Pkwy., Gaithersburg, MD. The hotel telephone number is 301–977–8900.

Contact Person: Kristine T. Khuc, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, FAX: 301–847–8533, email: *kristine.khuc@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512538. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On November 4, 2010, the committee will discuss the adequacy of endoscopically documented gastric ulcers as an outcome measure to evaluate drugs intended to prevent gastrointestinal complications of nonsteroidal anti-inflammatory drugs including aspirin.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before October 21, 2010. Oral presentations from the public will be scheduled between approximately 1 p.m. to 2 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before October 13, 2010. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by October 14, 2010.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Kristine T. Khuc at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 30, 2010.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2010–24984 Filed 10–4–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

The Food and Drug Administration (FDA) is announcing an amendment to the notice of meeting of the General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee. This meeting was announced in the **Federal Register** of August 16, 2010 (75 FR 49940). The amendment is being made to reflect a change in the *Agenda* portion of the document. There are no other changes.

FOR FURTHER INFORMATION CONTACT: Margaret McCabe-Janicki, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 1535, Silver Spring, MD 20993–0002, 301–796–7029, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512519. Please call the Information Line for up-to-date information on this meeting.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 16, 2010, FDA announced that a meeting of the General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee would be held on November 18, 2010. On page 49940, in the second column, in the *Agenda* portion of the document, the first full paragraph is changed to read as follows:

Agenda: On November 18, 2010, the committee will discuss, make recommendations, and vote on information related to the premarket approval application for MelaFind, sponsored by MELA Sciences. MelaFind(R) is a non-invasive and objective multi-spectral computer vision system designed to aid physicians in the detection of early melanoma from among clinically atypical (those having one or more clinical or historical characteristics of melanoma, such as asymmetry, border irregularity, color variegation, diameter greater than 6 millimeters, evolving, patient concern, regression, and "ugly duckling") cutaneous pigmented lesions that are non-ulcerated, not bleeding, and less than 2.2 centimeters in diameter, when a physician chooses to obtain additional information before making a final decision to biopsy to rule out melanoma.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to the advisory committees.

Dated: September 30, 2010.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2010–24983 Filed 10–4–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI Research Centers at Minority-Serving Institutions.

Date: October 20, 2010.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Chang Sook Kim, PhD, Scientific Review Officer, Review Branch, DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7190, Bethesda, MD 20892, 301–435–0287, *carolko@mail.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Mentored Patient Oriented Research Career Development Awards.

Date: October 21, 2010.

Time: 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 8120 Military Road, NW., Washington, DC 20015.

Contact Person: Stephanie J. Webb, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7196, Bethesda, MD 20892, 301–435–0291, *stephanie.webb@nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Programs of Excellence in Glycosciences.

Date: October 25–26, 2010.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: YingYing Li-Smerin, MD, PhD, Scientific Review Officer, Office of Scientific Review, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7184, Bethesda, MD 20892–7924, 301–435–0277, *lismerin@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Program Project in Cardiac Fibrillation.

Date: October 28, 2010.

Time: 10 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: William J Johnson, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7178, Bethesda, MD 20892–7924, 301–435–0725, *johnsonwj@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: September 28, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–24932 Filed 10–4–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neuropsychiatry and Neurodegeneration.

Date: October 20, 2010.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Suzan Nadi, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217B, MSC 7846, Bethesda, MD 20892, 301–435–1259, *nadis@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts: Cardiac Ion Channels.

Date: October 21, 2010.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Joseph Thomas Peterson, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, 301–443–8130.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Analysis of Retinal Diseases.

Date: October 25, 2010.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Michael H. Chaitin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7850, Bethesda, MD 20892, (301) 435–0910, *chaitinm@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Chronic Fatigue Syndrome.

Date: November 2–3, 2010.

Time: 8 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)

Contact Person: Lynn E. Luethke, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5166, MSC 7844, Bethesda, MD 20892, (301) 806–3323, *luethkel@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Orthopedic and Skeletal Biology.

Date: November 8, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Baljit S. Moonga, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7806, Bethesda, MD 20892, 301–435–1777, *moongabs@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Mental Health Epidemiology.

Date: November 10, 2010.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Bob Weller, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3160, MSC 7770, Bethesda, MD 20892, (301) 435–0694, *wellerr@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: September 28, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–24930 Filed 10–4–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors, NHLBI.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Heart, Lung, and Blood Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NHLBI.

Date: October 25, 2010.

Time: 9 a.m. to 3 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Robert S. Balaban, PhD, Scientific Director, Division of Intramural Research, National Institutes of Health, NHLBI, Building 10, CRC, 4th Floor, Room 1581, 10 Center Drive, Bethesda, MD 20892, 301/496–2116.

Information is also available on the Institute's/Center's home page: *http://www.nhlbi.nih.gov/meetings/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: *September 28, 2010.*

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–24928 Filed 10–4–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Canadian Border Boat Landing Permit (CBP Form I–68)

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security

ACTION: 60-Day Notice and request for comments; Extension of an existing collection of information: 1651–0108.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Canadian Border Boat Landing Permit (Form I–

68). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before December 6, 2010, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, *Attn:* Tracey Denning, Regulations and Rulings, Office of International Trade, 799 9th Street, NW., 5th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street, NW., 5th Floor, Washington, DC. 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Canadian Border Boat Landing Permit.

OMB Number: 1651–0108.

Form Number: CBP Form I–68.

Abstract: The Canadian Border Boat Landing Permit (CBP Form I–68) allows participants entering the United States along the northern border by small pleasure boats less than 5 tons to telephonically report their arrival without having to appear in person for an inspection by a CBP officer. United States citizens, Lawful Permanent Residents of the United States, Canadian citizens, Landed Commonwealth Residents of Canada, and Landed Residents of Canada who are nationals of Visa Waiver Program countries listed in 8 CFR 217.2(a) are eligible to participate.

The information collected on Form I–68 allows people who enter the United States from Canada by small pleasure boats to be inspected only once during the boating season, rather than each time they make an entry. This information collection is provided for by 8 CFR 235.1(e) and Section 235 of Immigration and Nationality Act. CBP Form I–68 is accessible at *http://forms.cbp.gov/pdf/CBP_Form_I68.pdf.*

Current Actions: This submission is being made to extend the expiration date with no change to the burden hours.

Type of Review: Extension (without change).

Affected Public: Individuals or Households.

Estimated Number of Respondents: 68,000.

Estimated Time per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 11,288.

Estimated Annual Cost: $1,088,000.

Dated: September 30, 2010.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2010–25027 Filed 10–4–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Issuance of Final Determination Concerning Solar Photovoltaic Panel Systems

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection ("CBP") has issued a final determination concerning the country of origin of certain solar photovoltaic systems which may be offered to the United States Government under a government procurement contract. Based upon the facts presented, in the final determination CBP concluded that the U.S. is the country of origin of the solar photovoltaic systems for purposes of U.S. Government procurement.

DATES: The final determination was issued on September 29, 2010. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination on or before November 4, 2010.

FOR FURTHER INFORMATION CONTACT: Karen S. Greene, Valuation and Special Programs Branch, Regulations and Rulings, Office of International Trade (202–325–0041).

SUPPLEMENTARY INFORMATION: Notice is hereby given that on September 29, 2010, pursuant to subpart B of part 177, Customs Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of certain solar photovoltaic systems which may be offered to the United States Government under a government procurement contract. This final determination, in HQ H095409 was issued at the request of Solyndra, Inc. under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18). In the final determination, CBP concluded that, based upon the facts presented, certain articles will be substantially transformed in the U.S. Therefore, CBP found that the U.S. is the country of origin of the finished articles for purposes of U.S. Government procurement.

Section 177.29, Customs Regulations (19 CFR 177.29), provides that notice of final determinations shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Dated: September 29, 2010.

Sandra L. Bell,

Executive Director, Office of Regulations and Rulings, Office of International Trade.

HQ H095409

September 29, 2010

OT:RR:CTF:VS H095409 KSG

Joshua Holzer, Wilson Sonsini Goodrich & Rosati, 1700 K Street NW, Fifth Floor, Washington, D.C. 20006–3817

Re: U.S. Government Procurement; Title III, Trade Agreements Act of 1979; Country of Origin of solar photovoltaic panel system; substantial transformation

Dear Mr. Holzer:

This is in response to your letter, dated February 17, 2010, requesting a final determination on behalf of Solyndra, Inc., pursuant to subpart B of 19 CFR Part 177. Your submission of August 4, 2010, was considered as part of the file.

Under these regulations, which implement Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511 et seq.) ("TAA"), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

This final determination concerns the country of origin of certain photovoltaic panel systems that Solyndra may sell to the U.S. Government. We note that Solyndra is a party-at-interest within the meaning of 19 CFR 177.22(d)(1) and is entitled to request this final determination.

Facts:

The photovoltaic panels convert sunlight on low-slope commercial rooftops into electricity. The solar photovoltaic ("PV") panel systems contain both U.S. and foreign-origin raw materials and components. The following components are of U.S. origin: Ammonium hydroxide, an optical coupling agent, the middle tube, the outer tube, a frit, a gas bag, grease, a frame adhesive, wire harnesses, and the label nameplate.

The following raw materials are from foreign sources (Austria, Japan, the Netherlands, the United Kingdom, Belgium, and Switzerland): Molybdenum, copper, indium, gallium, selenium, cadmium sulfide, hydrochloric acid, and transparent conductive oxide. The manufactured components, which are produced in Germany, Switzerland, Singapore, Malaysia, Belgium, and China, are: An inner glass tube, an outer cap, an assembled pin, an inner contact, harness adhesive, beam, frames, universal, welded aluminum mounts, panel mount screw, lateral clip, grounding strap assembly, and a grounding strap screw.

Solyndra has a manufacturing facility in California where both a front end process and a back end process are performed, which takes approximately six and one half days to complete. Solyndra also conducts all its research and development for its product in the U.S. The front end process converts bare glass tubes into functional PV cells. The back end process encapsulates these tubes in a glass outer tube, isolating the active material from the environment by a true hermetic seal. The last step in the back end process is to assemble these finished modules onto a panel frame, resulting in a solar panel ready for rooftop installation.

The front end process includes five steps which turn a raw glass tube into a component for a PV system. The five steps are as follows:

(1) Bare glass tubes are cleaned using standard ultra-sonic bath and surfactant technology.

(2) Quality assurance testing is conducted using precisely calibrated machinery.

(3) Using Solyndra's proprietary in-line vacuum systems and physical vapor deposition and evaporation techniques, several layers of different thin films of molybdenum, copper, indium, gallium, and selenium, are deposited on the glass tube.

(4) The glass tubes are immersed into a precise chemical mixture, at a controlled temperature and Cadmium Sulfide is deposited onto the glass at a controlled thickness.

(5) Using either lasers or mechanical scribes to define solar cells and interconnect them, the deposited films are precisely patterned to increase the solar collection efficiency of the glass tubes.

The back end process, which includes eight steps described below, subjects the treated glass tubes to additional processes to create finished modules that protect the solar cells from degradation over their 25-year service life in a rooftop installation. The Modules are then assembled into panels and combined with mounts, cable management components, and mounting hardware, resulting in a finished PV system. The eight steps are as folllows:

(1) The processed glass tubes are encapsulated in a plastic middle tube and a glass outer tube, creating a Module.

(2) Metal connectors are placed at each end of the Module to enable the Module to float in the completed PV System.

(3) Through a complex process that involves melting glass and metal together, the ends of each Module are covered with a stainless steel cap, creating a hermetic seal.

(4) After removing water and air from the Module, an optical coupling agent is used to fill the space between the inner and outer glass tubes and a plug is placed at the end of the Module to complete the sealing process.

(5) The plug is laser welded in place, and the weld is inspected for defects.

(6) Using a mass spectrometer based Helium leak detection system, each Module is checked for leaks.

(7) The approved Modules are then subjected to artificial sunlight and tested to determine the level of electricity being produced.

(8) Based on their performance, tubes are grouped in sets of 40 to make each solar panel.

Forty (40) finished Modules are pressed into each panel frame. Solyndra's customized mounts and mounting hardware are added to each panel to create a complete PV system, ready for rooftop installation.

Issue:

What is the country of origin of the solar PV panel system described above for the purposes of U.S. government procurement.

Law and Analysis:

Pursuant to Subpart B of Part 177, 19 CFR § 177.21 et seq., which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511 et seq.), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

The rule of origin set forth in 19 U.S.C. § 2518(4)(B) states:

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. *See also* 19 CFR § 177.22(a) defining "country of origin" in identical terms.

In rendering advisory rulings and final determinations for purposes of U.S. Government procurement, CBP applies the provisions of Subpart B of Part 177 consistent with the Federal Procurement Regulations. *See* 19 CFR § 177.21. In this regard, CBP recognizes that the Federal Procurement Regulations restrict the U.S. Government's purchase of products to U.S.-made or designated country end products for acquisitions subject to the TAA. *See* 48 CFR § 25.403(c)(1). The Federal Procurement Regulations define "U.S.-made end product" as: * * * an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. 48 CFR § 25.003. Therefore, the question presented in this final determination is whether, as a result of the operations performed in the United States, the foreign materials and components are substantially transformed into a product of the United States.

In determining whether the combining of parts or materials constitutes a substantial transformation, the determinative issue is the extent of the operations performed and whether the parts lose their identity and become an integral part of the new article. *Belcrest Linens* v. *United States,* 6 Ct. Int'l Trade 204, 573 F. Supp. 1149 (1983), aff'd, 741 F.2d 1368 (Fed. Cir. 1984). If the manufacturing or combining process is a minor one that leaves the identity of the imported article intact, a substantial transformation has not occurred. *Uniroyal, Inc.* v. *United States,* 3 Ct. Int'l Trade 220, 542 F. Supp. 1026 (1982). Assembly operations that are minimal or simple, as opposed to complex or meaningful, generally will not result in a substantial transformation. *See* C.S.D. 80–111, C.S.D. 85–25, C.S.D. 89–110, C.S.D. 89–118, C.S.D. 90–51, and C.S.D. 90–97.

In order to determine whether a substantial transformation occurs when components of various origins are assembled to form completed articles, CBP considers the totality of the circumstances and makes such decisions on a case-by-case basis. The country of origin of the article's components, the extent of the processing that occurs within a given country, and whether such processing renders a product with a new name, character, and use are primary considerations in such cases. Additionally, resources expended on product design and development, the extent and nature of post-assembly inspection procedures, and the worker skill required during the actual manufacturing process will be considered when analyzing whether a substantial transformation has occurred; however, no one factor is determinative.

In this case, the solar PV systems are produced in a production facility located in

the U.S. All the research and development for the solar PV panel system is performed in the U.S. A significant number of the components used to make these products are of U.S.-origin. Further, this case clearly involves complex and meaningful assembly operations performed in the U.S. Several layers of thin film deposits are placed on the bare glass tubes which are then transformed into a module for a solar PV panel system with a new name, different and specialized characteristics and use. Therefore, we find that the imported components are substantially transformed in the U.S. and that the country of origin of the solar PV panel systems is the U.S. for purposes of U.S. Government procurement.

We suggest that you contact the Federal Trade Commission to determine whether the solar panel systems may be marked "Made in the U.S.A.", which is within their jurisdiction.

Holding:

Based on the facts of this case, the country of origin of the solar PV panel systems is the U.S. for purposes of U.S. Government procurement.

Notice of this final determination will be given in the Federal Register, as required by 19 CFR § 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 CFR § 177.31 that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 CFR § 177.30, any party-at-interest may, within 30 days after publication of the Federal Register Notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

Sandra L. Bell,

Executive Director, Office of Regulations and Rulings, Office of International Trade.

[FR Doc. 2010–25024 Filed 10–4–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal-State Compact.

SUMMARY: This notice publishes approval of the State of Oklahoma Cherokee Nation Off-Track Wagering Compact.

DATES: *Effective Date:* October 5, 2010.

FOR FURTHER INFORMATION CONTACT: Paula L. Hart, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. This Compact authorizes the Cherokee Nation of Oklahoma to engage in off-track wagering.

Dated: September 23, 2010.

Larry Echo Hawk,

Assistant Secretary—Indian Affairs.

[FR Doc. 2010–25005 Filed 10–4–10; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal-State Class III Gaming Compact.

SUMMARY: This notice publishes an extension of Gaming Compact between the Rosebud Sioux Tribe and the State of South Dakota.

DATES: *Effective Date:* October 5, 2010.

FOR FURTHER INFORMATION CONTACT: Paula L. Hart, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. This amendment allows for the extension of the current Tribal-State Compact until February 28, 2011.

Dated: September 17, 2010.

Paul Tsosie,

Chief of Staff to the Assistant Secretary—Indian Affairs.

[FR Doc. 2010–25003 Filed 10–4–10; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management, Regulation and Enforcement

Intent To Prepare a Supplemental Environmental Impact Statement: Outer Continental Shelf, Alaska OCS Region, Chukchi Sea Planning Area, Oil and Gas Lease Sale 193

AGENCY: Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE), Interior.

ACTION: Notice.

SUMMARY: The Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE) is giving notice of its intent to publish a Supplemental Environmental Impact Statement for Outer Continental Shelf (OCS) Oil and Gas Lease Sale 193 in the Chukchi Sea Planning Area, Alaska. This Supplementary EIS will provide new analysis in response to a remand by the United States District Court for the District of Alaska.

ADDRESSES: Address all comments concerning this notice to Deborah Cranswick, Chief, Environmental Analysis Section I, Bureau of Ocean Energy Management, Regulation and Enforcement, Alaska OCS Region, 3801 Centerpoint Drive, Suite 500, Anchorage, Alaska 99503–5820.

FOR FURTHER INFORMATION CONTACT: Deborah Cranswick, 907–334–5267.

SUPPLEMENTARY INFORMATION:

1. Authority: The NOI is published pursuant to the regulations (40 CFR 1508.22(b)) implementing the provisions of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) (NEPA).

2. Purpose of Notice of Intent: Pursuant to the regulations (40 CFR 1508.22) implementing the procedural provisions of NEPA, the BOEMRE is announcing its intent to prepare a Supplemental EIS for OCS Oil and Gas Lease Sale 193 in the Chukchi Sea Planning Area, Alaska. The Supplemental EIS will supplement the analysis from the Lease Sale 193 Final EIS (OCS EIS/EA MMS 2007–0026) by: (1) Analyzing the environmental impact of natural gas development; (2) determining whether missing information identified by BOEMRE is relevant or essential to the decisionmaking under 40 CFR 1502.22; and (3) determining whether the cost of obtaining the missing information is exorbitant, or the means of obtaining the information is unknown. The Final EIS for Sale 193 evaluated the potential effects of the proposed sale and three

alternatives, which included no action and two configurations to defer areas from leasing along the coast adjacent to the proposed sale area. The Final EIS evaluated the potential effects of exploration seismic surveying and drilling; oil development, production, and transportation; and accidental crude oil spills.

3. Scoping: In accordance with 40 CFR 1502.9(c)(4), there will be no scoping conducted for this SEIS. The scope of the Final EIS for Sale 193 and the remand by the United States District Court for the District of Alaska establish the scope for this SEIS. A Notice of Availability of the draft Supplemental EIS for public review and comment will be announced: (1) In the **Federal Register** by BOEMRE and the Environmental Protection Agency; (2) on the BOEMRE, Alaska OCS Region, homepage; and (3) in the local media. Public hearings will be held following release of the Draft Supplemental EIS. Dates and locations will be determined and published at a later date.

4. Cooperating Agencies: The DOI policy is to invite other Federal agencies, and State, Tribal, and local governments to consider becoming cooperating agencies in the preparation of an EIS. Council on Environmental Quality (CEQ) regulations state that qualified agencies and governments are those with "jurisdiction by law or special expertise." Potential cooperating agencies should consider their authority and capacity to assume the responsibilities of a cooperating agency. Cooperating agency status neither enlarges nor diminishes the final decisionmaking authority of any agency involved in the NEPA process. The BOEMRE invites qualified government entities to inquire about cooperating agency status for this Supplemental EIS. Upon request, the BOEMRE will provide qualified cooperating agencies with a written summary of ground rules for cooperating agencies, including time schedules and critical action dates, milestones, responsibilities, scope and detail of cooperating agencies' contributions, and handling of pre-decisional information. The BOEMRE anticipates this summary will form the basis for a Memorandum of Understanding between the BOEMRE and each cooperating agency. You should also consider the CEQ's "Factors for Determining Cooperating Agency Status." This document is available on the CEQ Web site at: *http://ceq.hss.doe.gov/nepa/regs/cooperating/cooperatingagencymemofactors.html.* Even if your organization is not a cooperating agency, you will have an opportunity to provide information and comments to BOEMRE during the comment phase of the NEPA/EIS process. Additional information may be found at the following Web site: *http://alaska.boemre.gov.*

Dated: September 28, 2010.

Robert P. LaBelle,

Acting Associate Director for Offshore Energy and Minerals Management.

[FR Doc. 2010–25038 Filed 10–4–10; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management, Regulation and Enforcement

Outer Continental Shelf Official Protraction Diagrams

AGENCY: Bureau of Ocean Energy Management, Regulation and Enforcement, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that effective with this publication, the following NAD 83-based Outer Continental Shelf Official Protraction Diagrams (OPDs) located within Atlantic Ocean areas, with revision dates as indicated, are now available. The BOEMRE in accordance with its authority and responsibility under Title 43, Code of Federal Regulations, is updating the basic record used for the description of renewable energy, mineral, and oil and gas lease sales in the geographic areas they represent. These revised OPDs reflect updated locations for the Submerged Lands Act (3 nautical mile), Limit of "8(g) Zone," National Marine Sanctuary, and/or Planning Area boundaries. The revised OPDs are for informational purposes only.

Outer Continental Shelf Official Protraction Diagrams in the North Atlantic, Mid Atlantic, South Atlantic, and Straits of Florida Planning Areas

Description/Date

NG17–02 (Ft. Pierce)—April 1, 2008
NG17–03 (Walker Cay)—April 1, 2008
NG17–05 (West Palm Beach)—April 1, 2008
NG17–06 (Bahamas)—April 1, 2008
NG17–08 (Miami)—April 1, 2008
NG17–09 (Bimini)—April 1, 2008
NG17–10 (Dry Tortugas)—April 1, 2008
NG17–11 (Key West)—April 1, 2008
NH17–02 (Brunswick)—April 1, 2008
NH17–05 (Jacksonville)—April 1, 2008
NH17–08 (Daytona Beach)—April 1, 2008
NH17–11 (Orlando)—April 1, 2008
NH18–01 (Harrington Hill)—April 1, 2008
NH18–02 (Taylor)—April 1, 2008
NH18–03 (Unnamed)—April 1, 2008
NH18–04 (Blake Spur)—April 1, 2008
NH18–05 (Unnamed)—April 1, 2008
NI17–09 (Georgetown)—April 1, 2008
NI17–11 (Savannah)—April 1, 2008
NI17–12 (James Island)—April 1, 2008
NI18–01 (Rocky Mount)—April 1, 2008
NI18–02 (Manteo)—April 1, 2008
NI18–04 (Beaufort)—April 1, 2008
NI18–05 (Russell)—April 1, 2008
NI18–06 (Hatteras Ridge)—April 1, 2008
NI18–07 (Cape Fear)—April 1, 2008
NI18–08 (Marmer)—April 1, 2008
NI18–09 (Lanier)—April 1, 2008
NI18–10 (Richardson Hills)—April 1, 2008
NI18–11 (Wittman)—April 1, 2008
NI18–12 (Tibbet)—April 1, 2008
NI19–04 (Evans)—April 1, 2008
NI19–07 (Unnamed)—April 1, 2008
NJ18–02 (Wilmington)—May 1, 2006
NJ18–03 (Hudson Canyon)—April 1, 2008
NJ18–05 (Salisbury)—May 1, 2006
NJ18–06 (Wilmington Canyon)—April 1, 2008
NJ18–08 (Chincoteague)—May 1, 2006
NJ18–09 (Baltimore Rise)—April 1, 2008
NJ18–11 (Currituck Sound)—April 1, 2008
NJ19–01 (Block Canyon)—April 1, 2008
NJ19–04 (Heezen Plateau)—April 1, 2008
NJ19–05 (Powell)—April 1, 2008
NJ19–06 (Muller)—April 1, 2008
NJ19–07 (Jones)—April 1, 2008
NJ19–08 (Uchupi)—April 1, 2008
NJ19–10 (Wilmington Valley)—April 1, 2008
NK18–09 (Hartford)—May 1, 2006
NK18–11 (Newark)—May 1, 2006
NK18–12 (New York)—May 1, 2006
NK19–01 (Portland)—May 1, 2006
NK19–02 (Bath)—May 1, 2006
NK19–07 (Providence)—May 1, 2006
NK19–10 (Block Island Shelf)—May 1, 2006
NL19–11 (Bangor)—May 1, 2006
NL19–12 (Eastport)—May 1, 2006

FOR FURTHER INFORMATION CONTACT: Renee Orr, Chief, Leasing Division at (703) 787–1376 or via e-mail at *Renee.Orr@boemre.gov.* Copies of the revised OPDs are available for download in .pdf format from *http://www.boemre.gov/offshore/mapping/atlantic.htm.*

Dated: August 5, 2010.

Robert P. LaBelle,

Acting Associate Director for Offshore Energy and Minerals Management.

[FR Doc. 2010–25037 Filed 10–4–10; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2010–N214; 40120–1112–0000–F5]

Receipt of Applications for Endangered Species Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

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 (ESA) prohibits activities with listed species unless a Federal permit is issued that allows such activities. The ESA requires that we invite public comment before issuing these permits.

DATES: We must receive written data or comments on the applications at the address given below, by *November 4, 2010.*

ADDRESSES: Documents and other information submitted with the applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Cameron Shaw, Permit Coordinator).

FOR FURTHER INFORMATION CONTACT: Cameron Shaw, telephone 904–731–3191; facsimile 904–731–3045.

SUPPLEMENTARY INFORMATION: The public is invited to comment on the following applications for permits to conduct certain activities with endangered and threatened species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and our regulations in the Code of Federal Regulations (CFR) at 50 CFR 17. This notice is provided under section 10(c) of the Act. If you wish to comment, you may submit comments by any one of the following methods. You may mail comments to the Fish and Wildlife Service's Regional Office (*see* **ADDRESSES** section) or via electronic mail (e-mail) to: *permitsR4ES@fws.gov*. Please include your name and return address in your e-mail message. If you do not receive a confirmation from the Fish and Wildlife Service that we have received your e-mail message, contact us directly at the telephone number listed above (*see* **FOR FURTHER INFORMATION CONTACT** section). Finally, you may hand deliver comments to the Fish and Wildlife Service office listed above (*see* **ADDRESSES** section).

Before including your address, telephone number, e-mail address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comments to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Applicant: Paul Johnson, Marion, Alabama, TE130300.

The applicant requests an amendment to authorize the capture, captive propagation, and collection of tissue samples for genetic analysis for royal Marstonia (*Pyrgulopsis ogmorhaphe*), Ouachita rock pocketbook (*Arkansia wheeleri*), and pygmy sculpin (*Cottus paulus*).

Applicant: The Clinic for the Rehabilitation of Wildlife, Sanibel, Florida, TE054963.

The applicant requests Dr. Amber McNamara, DVM, be authorized as a permittee to perform veterinary services for endangered and threatened species of sea turtles: Kemp's Ridley (*Lepidochelys kempii*), hawksbill *(Eretmochelys imbricata*), leatherback (*Dermochelys coriacea*), green (*Chelonia mydas*), loggerhead (*Caretta caretta*), and olive Ridley (*Lepidochelys olivacea*).

Applicant: Anna George, Chattanooga, Tennessee, TE22311A.

The applicant requests authorization to conduct presence/absence surveys and collect tissue samples from the following freshwater fishes throughout their respective ranges: Blue shiner (*Cyprinella caerulea*), spotfin chub (*Erimonax monacha*), blackside dace (*Phoxinus cumberlandensis*), laurel dace (*Phoxinus saylori*), amber darter (*Percina antesella*), goldline darter (*Percina aurolineata*), conasauga logperch (*Percina jenkinsi*), and snail darter (*Percina tanasi*).

Applicant: Nashville Zoo, Nashville, Tennessee, TE22570A.

The applicant requests authorization to conduct presence/absence surveys, population monitoring, captive propagation, and maintain a live educational exhibit at the Nashville Zoo for the Nashville crayfish (*Orconectes shoupi*).

Applicant: Archbold Expeditions, Venus, Florida, TE88035.

Applicant requests renewed authorization to take (wildlife) or destroy (plants): The Florida scrub jay (*Aphelocoma coerulescens*), Audubon's crested caracara (*Polyborus plancus audubonii*), eastern indigo snake (*Drymarchon corais couperi*), bluetail mole skink (*Eumeces egregarius lividus*), sand skink (*Neoseps reynoldsi),* Florida panther (*Felis concolor coryi*), wood stork (*Mycteria americana*), Florida perforate cladonia (*Cladonia perforate*), pigeon-wing (*Clitoria fragrans*), scrub mint (*Dicerandra frutescens*), scrub buckwheat (*Eriogonum longifolium* var., *Gnaphifolium* sp.), snakeroot (*Eryngium cuneifolium),* highland's scrub hypericum (*Hypericum cumulicola*), scrub blazing star (*Liatris ohlingerae*), Britton's beargrass (*Nolina brittoniana*), papery whitlow-wort (*Paronychia chartacea*), wireweed (*Polygonella basiramia*), sandlace (*Polygonella myriophylla*), scrub plum (*Prunus geniculata*), and Carter's mustard (*Warea carteri*) during land management investigations. This activity will take place on Archbold Biological Station properties in Highlands County, Florida.

Applicant: Tennessee Valley Authority, Knoxville, Tennessee, TE–117405.

Applicant is requesting renewed authority to take endangered species, including seven (7) listed mammal species, four (4) listed bird species, four (4) listed reptile species, two (2) listed insect species, one (1) listed arachnid species, four (4) listed crustacean species, twenty-four (24) listed fish species, sixty six (66) listed mussel species, and forty nine (49) listed plant species for the purpose of scientific studies and to ensure agency activities contribute to species recovery efforts. This activity will take place across species ranges in a multi-state area.

Applicant: Gulf South Research Corporation, Baton Rouge, Louisiana, TE–16637A.

Applicant requests authority to take red-cockaded woodpeckers (*Picoides borealis*) and sample Louisiana quillwort (*Isoetes louisianensis*) during presence/absence surveys on the Stennis Western Maneuver Area, Hancock County, Mississippi.

Applicant: U.S. Forest Service, Chattahoocee-Oconee National Forest, Monticello, Georgia, TE–27344.

The applicant requests renewal of authorization for trapping, banding, translocating and installing artificial nesting cavities for red-cockaded woodpeckers on the Chattahoocee-Oconee National Forests in Georgia.

Applicant: Larry Wood, McClellanville, South Carolina, TE–33469.

The applicant requests renewal of authorization for trapping, banding, translocating and installing artificial nesting cavities for red-cockaded woodpeckers throughout South Carolina, Georgia, Florida and Alabama.

Applicant: St. Johns Water Management District, Palatka, Florida, TE–84047.

The applicant requests renewal of authorization for trapping, banding, translocating and installing artificial nesting cavities for red-cockaded woodpeckers on Water Management District properties in Orange, Brevard, Indian River, Osceola, Alachua and Duval Counties, Florida.

Applicant: James Moyers, Panama City, Florida, TE–125589.

The applicant requests renewal of authorization for trapping, banding, translocating and installing artificial nesting cavities for red-cockaded woodpeckers in Gulf and Bay Counties, Florida.

Applicant: Monica Folk, Kissimmee, Florida, TE–21809A.

The applicant requests authorization to take the following species during presence/absence surveys and scientific research projects: Red-cockaded woodpecker, wood stork (*Mycteria americana),* and snail kite (*Rostrhamus sociabilis plumbeus*). This activity will be conducted throughout the species ranges in Florida.

Applicant: Peter Frederick, University of Florida, Gainesville, Florida, TE–51552–4.

Applicant requests renewal of authority to take wood storks, for the purpose of researching nesting activities in Lee, Dade, Broward, Monroe, Palm Beach, Martin, Pasco, Hillsborough, Polk and Brevard Counties, Florida.

Applicant: Georgia Department of Natural Resources, Social Circle, Georgia, TE–16654A.

Applicant requests authority to collect rock gnome lichen (*Cetrdonia linearis)* for the purpose of obtaining voucher specimens, to include a portion of an individual plant from previously undocumented locations from throughout the species range in Georgia.

Applicant: Florida Fish and Wildlife Conservation Commission, Tallahassee, Florida, TE–51553.

Applicant requests renewed authorization to take the Florida panther (*Felis concolor coryi*) for the purpose of species recovery activities. Such activities include immobilize, temporarily hold, transport, mark, attach tracking devices, provide medical assistance and euthanize. These activities may take place throughout Florida.

Applicant: National Park Service, Big Cypress National Preserve, Ochopee, Florida, TE–146761.

Applicant requests renewed authorization to take the Florida panther for the purpose of species recovery activities. Such activities include immobilize, temporarily hold, transport, mark, attach tracking devices, provide medical assistance and euthanize. These activities will take place within and adjacent to the Big Cypress National Preserve, Florida.

Applicant: Jacksonville Zoological Society, Jacksonville, Florida, TE–763744.

Applicant requests renewal of authorization to take by housing and providing care for Florida panther for the purpose of public education. This activity will take place in Duval County, Florida.

Applicant: Carola Hass, Virginia Tech, Blacksburg, Virginia, TE–49502.

Applicant requests authorization to take flatwoods salamander (*Ambystoma bishop*) for the purpose of conducting presence/absence surveys. This work will be conducted on Eglin Air Force Base, Florida.

Applicant: Joyce Klaus, Culloden, Georgia, TE–83992.

Applicant requests renewed authorization to take by collecting flatwoods salamander for the purpose of conducting presence/absence surveys. This work will be conducted in South Carolina, Georgia, Florida and Alabama.

Applicant: CH2M Hill, Atlanta, Georgia, TE–18225A.

The applicant requests authorization to take during presence/absence surveys amber darter (*Percina antesella*) and short-nose sturgeon (*Acipenser brevirostrum*) throughout Georgia.

Applicant: Dr. Reed Noss, University of Central Florida, TE–20020A.

The applicant requests authorization to take Florida grasshopper sparrows (*Ammodramus savannarum floridanus*) through capture and banding. This activity will take place on State and Federal lands in Okeechobee, Osceola, Highlands, and Polk Counties, Florida

Applicant: Michael LaVoie, Eastern Band of Cherokee Indians, Cherokee, North Carolina TE–20026A.

The applicant requests authorization to take Carolina northern flying squirrels (*Glaucomys sabrinus coloratus*) by capture and tagging. This activity will take place on tribal lands of the Eastern Band of the Cherokee, North Carolina.

Applicant: Michael LaVoie, Cherokee, North Carolina, TE–20026A.

The applicant requests authorization to take Carolina northern flying squirrels for the purpose of presence/absence surveys and to conduct scientific research through capture/marking studies. This activity will take place on tribal lands of the Eastern Band of the Cherokee Indians.

Dated: September 22, 2010.

Mark J. Musaus,

Acting Regional Director.

[FR Doc. 2010–24881 Filed 10–4–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF JUSTICE

[OMB Number 1124–0005]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Short-Form Registration Statement (Foreign Agents).

The Department of Justice (DOJ), National Security Division (NSD) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 75, Number 147, pages 45153–45154 on August 2, 2010, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until November 4, 2010. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

—Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Short-Form Registration Statement (Foreign Agents).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* NSD–6. National Security Division, U.S. Department of Justice. Pursuant to Section 212 of Public Law 110–81, the Honest Leadership and Open Government Act of 2007 (HLOGA), the FARA registration forms recently submitted to OMB for 3 year renewal approvals, contain fillable-fileable, and E-signature capabilities, and the E–Filing system under development and near completion will permit registrants to file their registration forms electronically to the FARA Registration Unit, 24 hours a day, seven days a week. FARA E–Filing will be accessed via the FARA public Web site located at *http://www.fara.gov/* and will provide instruction to assist registrants in completing, signing and submitting the forms, as well as instruction on how to electronically pay the required registration filing fees via online credit or debit card payments.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit, Not-for-profit institutions, and individuals or households. *Abstract:* The form is used to register foreign agents as required under the provisions of the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. 611, *et seq.* Rule 202 of the Act requires that a partner, officer, director, associate, employee and agent of a registrant who engages directly in activity in furtherance of the interests of the foreign principal, in other than a clerical, secretarial, or in a related or similar capacity, file a short-form registration statement.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average response:* The estimated total number of respondents is 523 who will complete a response within .429 hours (25 minutes).

(6) *An estimate of the total burden (in hours) associated with the collection:* The estimated total public burden associated with this information collection is 224 hours annually.

If additional information is required contact: Lynn Murray, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 2E–502, Two Constitution Square, 145 N Street, NE., Washington, DC 20530.

Dated: September 29, 2010.

Lynn Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2010–24872 Filed 10–4–10; 8:45 am]

BILLING CODE 4410–PF–P

DEPARTMENT OF JUSTICE

[OMB Number 1124–0001]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: Registration Statement (Foreign Agents).

The Department of Justice (DOJ), National Security Division (NSD), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 75, Number 147, page 45153 on August 2, 2010, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until November 4, 2010. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Registration Statement (Foreign Agents).

(3) *The agency form number and the applicable component of the Department of Justice sponsoring the collection:* Form Number: NSD–1. National Security Division, U.S. Department of Justice. Pursuant to Section 212 of P.L. 110–81, the Honest Leadership and Open Government Act of 2007 (HLOGA), the FARA registration forms recently submitted to OMB for 3-year renewal approvals, contain fillable-fileable, and E-signature capabilities, and the E-Filing system under development and near completion will permit registrants to file their registration forms electronically to the FARA Registration Unit, 24 hours a day, seven days a week. FARA E-Filing will be accessed via the FARA public Web site located at *http://www.fara.gov/* and will provide instruction to assist registrants in completing, signing and

submitting the forms, as well as instruction on how to electronically pay the required registration filing fees via online credit or debit card payments.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit, Not-for-profit institutions, and individuals or households. The form contains registration statement and information used for registering foreign agents under the provisions of the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. 611, *et seq.*

(5) *An estimate of the total number of respondents and the amount of time estimated for an average response:* The estimated total number of respondents is 67 respondents at 1.375 hours (1 hour and 22 minutes) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total public burden associated with this information collection is 92 hours annually.

If additional information is required contact: Lynn Murray, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 2E–502, Two Constitution Square, 145 N Street, NE., Washington, DC 20530.

Dated: September 29, 2010.

Lynn Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2010–24873 Filed 10–4–10; 8:45 am]

BILLING CODE 4410–PF–P

DEPARTMENT OF JUSTICE

[OMB Number 1124–0006]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Exhibit A to Registration Statement (Foreign Agents).

The Department of Justice (DOJ), National Security Division (NSD), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 75, Number 147, pages 45151–45152 on August 2, 2010, allowing for a 60 day comment period. The purpose of this notice is to allow for an additional 30 days for public comment until November 4, 2010. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Exhibit A to Registration Statement (Foreign Agents).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: NSD–3. National Security Division, U.S. Department of Justice. Pursuant to Section 212 of Public Law 110–81, the Honest Leadership and Open Government Act of 2007 (HLOGA), the FARA registration forms recently submitted to OMB for 3 year renewal approvals, contain fillable-fileable, and E-signature capabilities, and the E–Filing system under development and near completion will permit registrants to file their registration forms electronically to the FARA Registration Unit, 24 hours a day, seven days a week. FARA E–Filing will be accessed via the FARA public Web site located at *http://www.fara.gov/* and will provide instruction to assist registrants in completing, signing and submitting the forms, as well as instruction on how to electronically pay the required registration filing fees via online credit or debit card payments.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit, Not-for-profit institutions, and individuals or households. The form is used to register foreign agents as required under the provisions of the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. 611, *et seq.,* must set forth the information required to be disclosed concerning each foreign principal, and must be utilized within 10 days of date contract is made or when initial activity occurs, whichever is first.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average response:* The estimated total number of respondents is 164 who will complete a response within .49 hours (29 minutes).

(6) An estimate of the total public burden (in hours) associated with the collection: The estimated total public burden associated with this information collection is 80 hours annually.

If additional information is required contact: Lynn Murray, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 2E–502, Two Constitution Square, 145 N Street, NE., Washington, DC 20530.

Dated: September 29, 2010.

Lynn Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2010–24874 Filed 10–4–10; 8:45 am]

BILLING CODE 4410–PF–P

DEPARTMENT OF JUSTICE

[OMB Number 1124–0004]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Exhibit B to Registration Statement (Foreign Agents).

The Department of Justice (DOJ), National Security Division (NSD) will be submitting the following information

collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 75, Number 147, page 45152 on August 2, 2010, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until November 4, 2010. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies' concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

— Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
— Evaluate the accuracy of the agencies' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
— Enhance the quality, utility, and clarity of the information to be collected; and
— Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Exhibit B to Registration Statement (Foreign Agents)

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: NSD–4. National Security Division, U.S. Department of Justice. Pursuant to Section 212 of Public Law 110–81, the Honest Leadership and Open Government Act of 2007 (HLOGA), the FARA registration forms recently submitted to OMB for 3 year renewal approvals, contain fillable-fileable, and E-signature capabilities, and the E–Filing system under development and near completion will permit registrants to file their registration forms electronically to the FARA Registration Unit, 24 hours a day, seven days a week. FARA E–Filing will be accessed via the FARA public Web site located at *http://www.fara.gov/* and will provide instruction to assist registrants in completing, signing and submitting the forms, as well as instruction on how to electronically pay the required registration filing fees via online credit or debit card payments.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit, not-for-profit institutions, and individuals or households. The form is used to augment the registration statement of foreign agents as required by the provisions of the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. 611, *et seq.,* must set forth the agreement or understanding between the registrant and each of his foreign principals as well as the nature and method of performance of such agreement or understanding and the existing or proposed activities engaged in or to be engaged in, including political activities, by the registrant for the foreign principal, and must be filed within 10 days of the date a contract is made or when initial activity occurs, whichever is first.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average response:* The total estimated number of responses is 164 at approximately .33 hours (20 minutes) per response.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 54 total annual burden hours associated with this collection.

If additional information is required contact: Lynn Murray, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 2E–502, Two Constitution Square, 145 N Street, NE., Washington, DC 20530.

Dated: September 29, 2010.

Lynn Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2010–24875 Filed 10–4–10; 8:45 am]

BILLING CODE 4410–PF–P

DEPARTMENT OF JUSTICE

[OMB Number 1124–0002]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Supplemental Statement (Foreign Agents).

The Department of Justice (DOJ), National Security Division (NSD), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register,** Volume 75, Number 147, pages 45150–45151 on August 2, 2010, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until November 4, 2010. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
–Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

— Enhance the quality, utility, and clarity of the information to be collected; and
— Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Supplemental Statement (Foreign Agents).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* NSD–2. National Security Division, U.S. Department of Justice. Pursuant to Section 212 of Public Law 110–81, the Honest Leadership and Open Government Act of 2007 (HLOGA), the FARA registration forms recently submitted to OMB for 3 year renewal approvals, contain fillable-fileable, and E-signature capabilities, and the E–Filing system under development and near completion will permit registrants to file their registration forms electronically to the FARA Registration Unit, 24 hours a day, seven days a week. FARA E–Filing will be accessed via the FARA public website located at *http://www.fara.gov/* and will provide instruction to assist registrants in completing, signing and submitting the forms, as well as instruction on how to electronically pay the required registration filing fees via online credit or debit card payments.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit, not-for-profit institutions, and individuals or households. The form is required by the provisions of the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. 611 *et seq.,* must be filed by the foreign agent within thirty days after the expiration of each period of six months succeeding the original filing date, and must contain accurate and complete information with respect to the foreign agent's activities, receipts and expenditures.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average response:* The estimated total number of respondents is 491, who will complete a response within 1.375 hours (1 hour and 22 minutes), 675 hours semi-annually.

(6) *An estimate of the total burden (in hours) associated with the collection:* The estimated total public burden associated with this information collection is 1,350 hours annually.

If additional information is required contact: Lynn Murray, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 2E–502, Two Constitution Square, 145 N Street, NE., Washington, DC 20530.

Dated: September 29, 2010.

Lynn Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2010–24877 Filed 10–4–10; 8:45 am]

BILLING CODE 4410–PF–P

DEPARTMENT OF JUSTICE

[OMB Number 1124–0003]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Amendment to Registration Statement (Foreign Agents).

The Department of Justice (DOJ), National Security Division (NSD), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 75, Number 147, pages 45154–45155 on August 2, 2010, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until November 4, 2010. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:
—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Amendment to Registration Statement (Foreign Agents).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* NSD–5. National Security Division, U.S. Department of Justice. Pursuant to Section 212 of Public Law 110–81, the Honest Leadership and Open Government Act of 2007 (HLOGA), the FARA registration forms recently submitted to OMB for 3-year renewal approvals, contain fillable-fileable, and E-signature capabilities, and the E–Filing system under development and near completion will permit registrants to file their registration forms electronically to the FARA Registration Unit, 24 hours a day, seven days a week. FARA E–Filing will be accessed via the FARA public Web site located at *http://www.fara.gov/* and will provide instruction to assist registrants in completing, signing and submitting the forms, as well as instruction on how to electronically pay the required registration filing fees via online credit or debit card payments.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit, Not-for-profit institutions, and

individuals or households. *Abstract:* The form is used in registration of foreign agents when changes are required under provisions of the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. 611, *et seq.*

(5) *An estimate of the total number of respondents and the amount of time estimated for an average response:* The estimated total number of respondents is 175 who will complete a response within 1½ hours.

(6) *An estimate of the total burden (in hours) associated with the collection:* The estimated total public burden associated with this information collection is 262 hours annually.

If additional information is required contact: Lynn Murray, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 2E–502, Two Constitution Square, 145 N Street, NE., Washington, DC 20530.

Dated: September 29, 2010.

Lynn Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2010–24876 Filed 10–4–10; 8:45 am]

BILLING CODE 4410–PF–P

DEPARTMENT OF LABOR

Office of the Secretary

Combating Exploitative Child Labor by Promoting Sustainable Livelihoods and Educational Opportunities for Children in Egypt

AGENCY: Bureau of International Labor Affairs, U.S. Department of Labor.

ACTION: New. Notice of availability of funds and solicitation for Cooperative Agreement Applications (SGA). The full announcement is posted on *http://www.grants.gov* and USDOL/ILAB's Web site at *http://www.dol.gov/ILAB/grants/main.htm.*

Funding Opportunity Number: SGA 10–09, "Combating Exploitative Child Labor by Promoting Sustainable Livelihoods and Educational Opportunities for Children in Egypt."

Catalog of Federal Domestic Assistance (CFDA) Number: Not applicable.

SUMMARY: The U.S. Department of Labor (USDOL), Bureau of International Labor Affairs (ILAB) will award up to $9.5 million through a cooperative agreement(s) to one or more qualifying organizations to combat exploitative child labor, particularly the worst forms of child labor, in Egypt. Projects funded under SGA 10–09 must combat child labor by seeking to achieve the following five goals:

1. Reducing exploitative child labor, especially the worst forms through the provision of direct educational services and by addressing root causes of child labor, including innovative strategies to promote sustainable livelihoods of target households;

2. Strengthening policies on child labor, education, and sustainable livelihoods, and the capacity of national institutions to combat child labor, address its root causes, and promote formal, nonformal and vocational education opportunities to provide children with alternatives to child labor;

3. Raising awareness of exploitative child labor and its root causes, and the importance of education for all children and mobilizing a wide array of actors to improve and expand education infrastructures;

4. Supporting research, evaluation, and the collection of reliable data on child labor, its root causes, and effective strategies, including educational and vocational alternatives, microfinance and other income generating activities to improve household income; and

5. Ensuring the long-term sustainability of these efforts.

Application and Submission Information: The full-text version of SGA 10–09 is available on *http://www.grants.gov* and USDOL/ILAB's Web site at *http://www.dol.gov/ILAB/grants/main.htm.*

Applications in response to this solicitation may be submitted in hard copy to USDOL or electronically via *http://www.grants.gov.* Applications submitted by other means, including e-mail, telegram, or facsimile (FAX) will not be accepted.

Key Dates: The deadline for submission of applications is 5 p.m. Eastern Standard Time (EST) on November 22, 2010. Applicants are advised to submit their applications in advance of the deadline. All technical questions regarding SGA 10–09 must be sent to USDOL by October 15, 2010 in order to receive a response. USDOL will make all cooperative agreement awards on or before December 31, 2010.

Agency Contacts: All technical questions regarding SGA 10–09 should be sent to Georgiette Nkpa, U.S. Department of Labor's Office of Procurement Services, via e-mail (e-mail address: *nkpa.georgiette@dol.gov*) no later than October 15, 2010; telephone: (202–693–4570)—please note that this is not a toll-free-number).

Signed at Washington, DC, this 29th day of September 2010.

Cassandra R. Mitchell,

Grant Officer.

[FR Doc. 2010–24870 Filed 10–4–10; 8:45 am]

BILLING CODE 4510–28–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (10–117)]

NASA Advisory Council; Technology and Innovation Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the Technology and Innovation Committee of the NASA Advisory Council. The meeting will be held for the purpose of reviewing the Space Technology Program planning and review innovation activities at NASA's Langley Research Center (LaRC).

DATES: Thursday, October 21, 2010, 9:30 a.m. to 3 p.m., Local Time.

ADDRESSES: NASA Langley Research Center, Building 1212, Room 208, Hampton, VA 23681. (Note that visitors will need to go to the LaRC Badge & Pass Office, which is to the right of the main gate, to be granted access.)

FOR FURTHER INFORMATION CONTACT: Mr. Mike Green, Office of the Chief Technologist, NASA Headquarters, Washington, DC 20546, (202) 358–4710, fax (202) 358–4078, or *g.m.green@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

- Office of the Chief Technologist Update
- Game Changing Technology program briefing
- Overview of Langley Research Center
- Update on Innovative Learning Experiences at LaRC

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Attendees will be requested to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide a copy of their

passport, visa, or green card in addition to providing the following information no less than 10 working days prior to the meeting: Full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, phone); and title/position of attendee. To expedite admittance, attendees with U.S. citizenship can provide identifying information 3 working days in advance by contacting Cheryl Cleghorn via e-mail at *cheryl.w.cleghorn@nasa.gov* or by telephone at 757–864–2497.

Dated: September 30, 2010.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2010–25020 Filed 9–30–10; 4:15 pm]

BILLING CODE P

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts

National Council on the Arts 171st Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on October 29, 2010 in Room M–09 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting, from 9 a.m. to 11 a.m. (ending time is approximate), will be open to the public on a space available basis. The meeting will include opening remarks by the Chairman, and Congressional and White House updates. This will be followed by presentations on a national study of outdoor festivals and the Mayors Institute on City Design 25th anniversary program, as well as a presentation by Ann Markusen, Director of the Project on Regional and Industrial Economics at the University of Minnesota's Humphrey Institute. After the presentations, the Council will review and vote on applications and guidelines, and will adjourn following concluding remarks.

If, in the course of the open session discussion, it becomes necessary for the Council to discuss non-public commercial or financial information of intrinsic value, the Council will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b. Additionally, discussion concerning purely personal information about individuals, submitted with grant applications, such as personal biographical and salary data or medical information, may be conducted by the Council in closed session in accordance with subsection (c)(6) of 5 U.S.C. 552b.

Any interested persons may attend, as observers, Council discussions and reviews that are open to the public. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY–TDD 202/682–5429, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from the Office of Communications, National Endowment for the Arts, Washington, DC 20506, at 202/682–5570.

Dated: September 30, 2010.

Kathy Plowitz-Worden,

Panel Coordinator, Office of Guidelines and Panel Operations.

[FR Doc. 2010–24886 Filed 10–4–10; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

President's Committee on the National Medal of Science; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: President's Committee on the National Medal of Science (1182).

Date and Time: Wednesday, October 20, 2010, 8:30 a.m.–1:30 p.m.

Place: Conference Room, Hilton Arlington Hotel, 950 North Stafford Street, Arlington, VA 22203.

Type of Meeting: Closed.

Contact Person: Ms. Mayra Montrose, Program Manager, Room 1282, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: 703–292–4757.

Purpose of Meeting: To provide advice and recommendations to the President in the selection of the 2010 National Medal of Science recipients.

Agenda: To review and evaluate nominations as part of the selection process for awards.

Reason for Closing: The nominations being reviewed include information of a personal nature where disclosure would constitute unwarranted invasions of personal privacy. These matters are exempt under 5 U.S.C. 552b(c)(6) of the Government in the Sunshine Act.

Dated: September 29, 2010.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2010–24848 Filed 10–4–10; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received 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 permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by November 4, 2010. This application 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 a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

1. Permit Application No. 2011–019

Applicant: Robert W. Sanders, Department of Biology, 1900 N. 12th Street, Temple University, Philadelphia, PA 19122.

Activity for Which Permit is Requested

Take, Export from USA, Introduce non-indigenous species into Antarctica, and Import into USA. The applicant plans to collect water samples containing marine microbes (algae and protozoa) for use in experiments, for preservation for future examination, and for extraction of nucleic acids for diversity and abundance analyses back at the home institution. Live cultures of marine bacteria, previously collected from Antarctic waters, will be used in shipboard experiments to study feeding rates and transfer of nutrients in Antarctic protistan grazers. All remaining live cultures will be autoclaved before disposal.

Location

Ross Sea region, Antarctica.

Dates

January 1, 2011 to April 1, 2011.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 2010–24865 Filed 10–4–10; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0316]

NUREG/CR–7010, Cable Heat Release, Ignition, and Spread in Tray Installations During Fire (CHRISTIFIRE); Volume 1: Horizontal Trays, Draft Report for Comment

AGENCY: Nuclear Regulatory Commission.

ACTION: Announcement of issuance for public comment, availability.

SUMMARY: The Nuclear Regulatory Commission has issued for public comment a document entitled: "NUREG/CR–7010, Cable Heat Release, Ignition, and Spread in Tray Installations During Fire (CHRISTIFIRE) Volume 1: Horizontal Trays, Draft Report for Comment."

DATES: Please submit comments by November 15, 2010. Comments received after this date will be considered if it is practical to do so, but the NRC staff is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include Docket ID NRC–2010–0316 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC website and on the Federal rulemaking Web site 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.

Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2010–0316. Address questions about NRC dockets to Carol Gallagher 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

Mail comments to: Cindy K. Bladey, Chief, Rules, Announcements and Directives Branch (RADB), Division of Administrative Services, Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to RADB at (301) 492–3446.

You can access publicly available documents related to this notice using the following methods:

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Public File Area O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* "NUREG/CR–7010, Cable Heat Release, Ignition, and Spread in Tray Installations During Fire (CHRISTIFIRE) Volume 1: Horizontal Trays" is available electronically under ADAMS Accession Number ML102700336.

Federal Rulemaking Web site: Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID: NRC–2010–0316.

FOR FURTHER INFORMATION CONTACT: David Stroup, Division of Risk Analysis, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. *Telephone:* 301–251–7609, *e-mail: David.Stroup@nrc.gov.*

SUPPLEMENTARY INFORMATION: NUREG/CR–7010, Volume 1 documents the first phase of a multi-year program called CHRISTIFIRE (*C*able *H*eat *R*elease, *I*gnition, and *S*pread in *T*ray *I*nstallations during *FIRE*). The overall goal of the program is to quantify the burning characteristics of grouped electrical cables. The first phase of the program focuses on horizontal tray configurations. The experiments conducted range from micro-scale, in which very small (5 mg) samples of cable materials were burned in a calorimeter to determine their heat of combustion and other properties; to full-scale, in which horizontal, ladder-back trays loaded with varying amounts of cable were burned under a large oxygen-depletion calorimeter. Other experiments include cone calorimetry, smoke and effluent characterization in a small test furnace, and intermediate-scale calorimetry involving a single tray of cables underneath a bank of radiant panels. The results of the small-scale experiments are to serve as input data for fire models, while the results of the full-scale experiments are to serve as validation data for the models.

Dated at Rockville, Maryland, this 28th day of September 2010.

For the Nuclear Regulatory Commission.

Mark H. Salley,

Chief, Fire Research Branch, Division of Risk Analysis, Office of Nuclear Regulatory Research.

[FR Doc. 2010–24914 Filed 10–4–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0309]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any

amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from September 9, 2010, to September 22, 2010. The last biweekly notice was published on September 21, 2010 (75 FR57521).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules, Announcements and Directives Branch (RADB), TWB–05–B01M, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be faxed to the RADB at 301–492–3446. 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 O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards

consideration, any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by telephone at (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through EIE, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by e-mail at *MSHD.Resource@nrc.gov,* or by a toll-free call at (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, *Attention:* Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

For further details with respect to this license amendment application, *see* the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading

Room on the Internet at the NRC Web site, *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 at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov*.

Duke Energy Carolinas, LLC, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: May 28, 2010.

Description of amendment request: The amendments would revise the Technical Specifications (TS) to allow manual operation of the containment spray system (CSS) and to change the setpoints for the refueling water storage tank (RWST).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1: Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The CSS and RWST are accident mitigation equipment. As such, changes in operation of these systems cannot have an impact on the probability of an accident.

The RWST will continue to comply with all applicable regulatory requirements and design criteria following approval of the proposed changes (*e.g.,* train separation, redundancy, and single failure). The water level on the containment floor will be higher at the start of transfer to the containment sump but will remain below the maximum design level analyzed for equipment submergence. The change in the sump pH will not result in a significant increase in radiological consequences of a LOCA [loss-of-coolant accident]. Therefore, the design functions performed by the equipment are not changed.

The proposed change alters the method of controlling the safety system following a design basis event so that manual actions are substituted for automatic actions. Calculations and simulator exercises confirm these actions will be taken within the appropriate scenario sequence timing to provide containment cooling and source term reduction.

The delay in CS [containment spray] operation will result in an increase in containment temperature, containment pressure, offsite dose, and control room dose during a LOCA or high energy line break inside containment. Containment analyses have been performed to demonstrate that containment pressure and temperature remain within the design limits and there is no significant impact on the environmental qualification for equipment inside containment. The reduction in fission product removal due to delayed CS operation does not result in exceeding the offsite dose and control room dose limits in 10 CFR 50.67. The analysis of the change in containment conditions due to a single failure of an operating spray pump and the suspension of CS determined that the pressure remained below the design limits.

The proposed change to adopt [Technical Specification Task Force] TSTF–493, Rev. 4, on a limited basis clarifies requirements for instrumentation to ensure the instrumentation will actuate as assumed in the safety analysis. Instruments are not an assumed initiator of any accident previously evaluated. As a result, the proposed change will not increase the probability of an accident previously evaluated. The proposed change will ensure that the instruments actuate as assumed to mitigate the accidents previously evaluated. As a result, the proposed change will not increase the consequences of an accident previously evaluated.

Based on this discussion, the proposed amendment does not significantly increase the probability or consequences of an accident previously evaluated.

Criterion 2: Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The modification to the low level setpoint will not install any new plant equipment. The setpoint will continue to be included within the engineered safeguards features instrumentation and monitored according to the applicable surveillance requirements. The evaluation of the new level setpoint and the change in the switchover sequence concluded that the equipment aligned to the sump will continue to have sufficient suction pressure prior to containment sump suction switchover. The design of the RWST low level instrumentation complies with all applicable regulatory requirements and design criteria.

The overall function of the CSS is not changed by this proposed amendment. The proposed change alters the method of controlling the safety system following a design basis event so that manual actions are substituted for automatic actions. Calculations confirm that these actions will be taken within the appropriate scenario sequence timing to provide containment cooling and source term reduction with no significant increase in radiological consequences and without exceeding containment design limits.

The proposed change to adopt TSTF–493, Rev. 4 on a limited basis does not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. The change does not alter assumptions made in the safety analysis but ensures that the instruments behave as assumed in the accident analysis. The proposed change is consistent with the safety analysis assumptions.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3: Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change will increase the calculated radiological dose at the site boundary and in the control room. However, the calculations demonstrate that the dose consequences at the site boundary, low population zone, and control room remain within regulatory acceptance limits of 10 CFR 50.67.

Additional analysis concluded:

- Peak containment pressure for analyzed design basis accidents will not be significantly increased and containment design limits will not be exceeded.
- Assumptions used in the environmental qualification of equipment exposed to the containment atmosphere remain bounding.
- Pumps aligned to the RWST and to the containment sump will have adequate suction pressure.
- The CSS will retain its ability to undergo all appropriate testing requirements following implementation of the proposed amendment. These testing requirements are conducted in accordance with the McGuire Inservice Testing Program and TS 3.6.6.

It is estimated that the implementation of this license amendment request will result in an approximate 22% reduction in core damage frequency. This amendment request is based on the Nuclear Energy Institute (NEI) and the Pressurized Water Reactor (PWR) Owners Group initiative to extend the post-Loss of Coolant Accident (LOCA) injection phase and delay the onset of the containment sump recirculation phase.

The proposed change to adopt TSTF–493, Rev. 4 on a limited basis clarifies the requirements for instrumentation to ensure the instrumentation will actuate as assumed in the accident analysis. No change is made to the accident analysis assumptions and no margin of safety is reduced as part of this change.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lara S. Nichols, Associate General Counsel, Duke Energy Corporation, 526 South Church Street—EC07H, Charlotte, NC 28202.

NRC Branch Chief: Gloria Kulesa.

Entergy Gulf States Louisiana, LLC, and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: July 22, 2010.

Description of amendment request: The proposed amendment would revise

Limiting Condition for Operation (LCO) 3.10.1, "Inservice Leak and Hydrostatic Testing Operation," and the associated Bases, to expand its scope to include provisions for temperature excursions greater than 200 degrees Fahrenheit (°F) as a consequence of inservice leak and hydrostatic testing, and as a consequence of scram time testing initiated in conjunction with an inservice leak or hydrostatic test, while considering operational conditions to be in Mode 4. The proposed change is consistent with NRC-approved Technical Specification Task Force (TSTF) Improved Standard Technical Specification Traveller, TSTF–484, "Use of TS 3.10.1 for Scram Time Testing Activities," that was announced in the **Federal Register** on October 27, 2001 (71 FR 63050), as part of the consolidated Line Item Improvement Process (CCIIP).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Technical Specifications currently allow for operation at > 200 °F while imposing MODE 4 requirements in addition to the secondary containment requirements required to be met. Extending the activities that can apply this allowance will not adversely impact the probability or consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Technical Specifications currently allow for operation at > 200 °F while imposing MODE 4 requirements in addition to the secondary containment requirements required to be met. No new operational conditions beyond those currently allowed by LCO 3.10.1 are introduced. The extended allowances would result from operations that commence at reduced temperatures, but approach the normal MODE 4 limit of 200 °F prior to completion of the inspections or testing. The changes do not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the changes do not impose any new or different requirements or eliminate any existing requirements. The changes do not alter assumptions made in the safety analysis. The proposed changes are consistent with the safety analysis assumptions and current plant operating practice.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Technical Specifications currently allow for operation at > 200 °F while imposing MODE 4 requirements in addition to the secondary containment requirements required to be met. Extending the activities that can apply this allowance will not adversely impact any margin of safety. Allowing completion of inspections and testing and supporting completion of scram time testing initiated in conjunction with an inservice leak or hydrostatic test prior to power operation, results in enhanced safe operations by eliminating unnecessary maneuvers to control reactor temperature and pressure.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Joseph A. Aluise, Assistant General Counsel—Nuclear, Entergy Services, Inc., 639 Loyola Avenue, New Orleans, Louisiana 70113.

NRC Branch Chief: Michael T. Markley.

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc., Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: August 19, 2010.

Description of amendment request: The proposed amendment would revise Technical Specifications to be consistent with Standard Technical Specifications 3.6.1.8 "Suppression Chamber-to-Drywell Vacuum Breakers" and 3.6.2.5 "Drywell-to-Suppression Chamber Differential Pressure," along with the associated Bases, of NUREG–1433, Revision 3, "Standard Technical Specifications General Electric Plants, BWR/4," modified to account for plant specific design details.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment does not significantly increase the probability or consequences of an accident since it does not involve a modification to any plant equipment or affect how plant systems or components are operated. No design functions or design parameters are affected by the proposed amendment. The proposed amendment involves the operation and testing of Primary Containment systems but does not impact containment design or performance requirements. Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve any physical alteration of plant equipment and does not change the method by which any safety-related system performs its function. No new or different types of equipment will be installed and the basic operation of installed equipment is unchanged. The methods governing plant operation and testing remain consistent with current safety analysis assumptions. The proposed amendment involves the operation and testing of Primary Containment systems but does not alter the way that the systems are operated or how the tests are performed. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change ensures that the safety functions of the pressure suppression chamber-drywell vacuum breakers and drywell-suppression chamber differential pressure are fulfilled by incorporating the guidance of NUREG–1433. The proposed amendment does not involve a physical modification of the plant and does not change the design or function of any component or system. Therefore, the proposed amendment will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. William C. Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 400 Hamilton Avenue, White Plains, NY 10601.

NRC Branch Chief: Nancy Salgado.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: August 10, 2010.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 3.9.3, "Reactor Building Penetrations," to allow reactor building flow path(s) providing direct access from the reactor building atmosphere to the outside atmosphere to be unisolated under administrative control, during movement of irradiated fuel assemblies. The proposed change is consistent with Technical Specification Task Force (TSTF) Technical Change Traveler 312, Revision 1, "Administratively Control Containment Penetrations."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The status of the penetration flow paths during fuel movement in the reactor building has no affect on the probability of the occurrence of any accident previously evaluated. The proposed change does not alter any plant equipment or operating practices in such a manner that the probability of an accident is increased. Since the consequences of a fuel handling accident (FHA) inside the reactor building with open penetrations flow paths is bounded by the current FHA analyses and the probability of an accident is not affected by the status of the penetration flow paths, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The open reactor building penetration flow paths are not accident initiators. The proposed allowance to open the reactor building penetrations during fuel movement inside the reactor building will not adversely affect plant safety functions or equipment operating practices such that a new or different accident could be created. Therefore, the proposed change does not create the possibility of an accident of a different kind than previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Technical Specification (TS) 3.9.3 closure requirements for reactor building penetrations ensure that the consequences of a postulated FHA inside the reactor building during irradiated fuel handling activities are minimized. The Limiting Condition for Operation establishes reactor building closure requirements, which limit the potential escape paths for fission products by ensuring that there is at least one integral barrier to the release of radioactive material. The proposed change to allow the reactor building penetration flow paths to be open during refueling operations under administrative controls does not significantly affect the expected dose consequences of a FHA because the limiting FHA does not credit reactor building closure or filtration. The proposed administrative controls provide assurance that prompt closure of the penetration flow paths will be accomplished in the event of a[n] FHA inside the reactor building. The provisions to promptly isolate open penetration flow paths provide assurance that the offsite dose consequences of a[n] FHA inside containment will be minimized. Therefore, this proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Joseph A. Aluise, Assistant General Counsel—Nuclear, Entergy Services, Inc., 639 Loyola Avenue, New Orleans, Louisiana 70113.

NRC Branch Chief: Michael T. Markley.

Exelon Generation Company, LLC, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Units 1 and 2, Will County, Illinois; Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Date of amendment request: June 29, 2010, as supplemented on August 24, 2010.

Description of amendment request: The proposed amendments would revise Technical Specifications (TS) Section 3.4.12, "Low Temperature Overpressure Protection (LTOP) System," to correct an inconsistency between the TS, and implementation of procedures and administrative controls for Safety Injection (SI) pumps required to mitigate a postulated loss of decay heat removal during mid-loop operation as discussed in NRC Generic Letter (GL) 88–17, "Loss of Decay Heat Removal."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change does not result in any physical changes to safety related structures, systems, or components. The proposed change revises TS 3.4.12 to correct an inconsistency between the TS, and implementation of procedures and administrative controls for SI pumps required to mitigate a postulated loss of decay heat removal during mid-loop operation as discussed in GL 88–17. Specifically, the proposed change adds a note to TS LCO [limiting condition for operation] 3.4.12 that states: "For the purpose of protecting the decay heat removal function, one or more SI pumps may be capable of injecting into the RCS in MODE 5 and MODE 6 when the reactor vessel head is on provided pressurizer level is ≤ 5 percent." The proposed change corrects an oversight introduced during the conversion of the Braidwood Station and Byron Station TS to the ITS [Improved TS].

The probability of occurrence of an accident is not increased since the proposed change will continue to require that no SI pumps are capable of injecting into the RCS in Modes 5 and 6 with pressurizer level greater than 5 percent.

The NRC has previously evaluated the allowance for one or more SI pumps to be capable of injecting into the RCS in Mode 5 or Mode 6 when the reactor vessel head is on provided pressurizer level is ≤ 5 percent for the Braidwood Station and Byron Station. In a safety evaluation dated August 31, 1990, related to Braidwood Station, Units 1 and 2, Amendment 25, and Byron Station, Units 1 and 2, Amendment 38, the NRC concluded that allowing SI pump capability to inject into the RCS in Mode 5 or Mode 6 when the reactor vessel head is on provided pressurizer level is ≤ 5 percent was acceptable. The availability of SI pumps under these circumstances does not present a concern regarding cold overpressure protection since sufficient air volume exists which allows Operations personnel time to mitigate the transient. This is in contrast to the analyzed cold overpressure transients, in which the RCS is assumed to be water solid at the onset of the event.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change revises TS 3.4.12 to correct an inconsistency between the TS, and implementation of procedures and administrative controls for SI pumps required to mitigate a postulated loss of decay heat removal during mid-loop operation as discussed in GL 88–17. Specifically, the proposed change adds a note to TS LCO 3.4.12 that states: "For the purpose of protecting the decay heat removal function, one or more SI pumps may be

capable of injecting into the RCS in MODE 5 and MODE 6 when the reactor vessel head is on provided pressurizer level is ≤ 5 percent." The proposed change corrects an oversight introduced during the conversion of the Braidwood Station and Byron Station TS to the ITS.

The proposed change is necessary for the purpose of mitigating the consequences of a loss of decay heat removal during mid-loop operations. Operation of at least one SI pump is required in some cases to prevent the core from uncovering. The only new configuration allowed by the proposed change is the potential of having one or more SI pumps available in Modes 5 and 6 with pressurizer level ≤ 5 percent. The potential overpressurization accident has been analyzed and accounted for by requiring pressurizer level to be ≤ 5 percent if one or more SI pumps are available.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change revises TS 3.4.12 to correct an inconsistency between the TS, and implementation of procedures and administrative controls for SI pumps required to mitigate a postulated loss of decay heat removal during mid-loop operation as discussed in GL 88–17. Specifically, the proposed change adds a note to TS LCO 3.4.12 that states: "For the purpose of protecting the decay heat removal function, one or more SI pumps may be capable of injecting into the RCS in MODE 5 and MODE 6 when the reactor vessel head is on provided pressurizer level is ≤ 5 percent." The proposed change corrects an oversight introduced during the conversion of the Braidwood Station and Byron Station TS to the ITS.

The proposed note allows one or more SI pumps to be capable of injecting into the RCS only when pressurizer level is ≤ 5 percent in Mode 5 and Mode 6 when the reactor vessel head is on. This provides protection to limit coolant input capacity during shutdown in which a pressure fluctuation due to coolant input from the SI pumps could occur more quickly than an operator could react, while providing an allowance for one or more SI pumps to be capable of injecting into the RCS during conditions in which a loss of decay heat removal could result in rapid core uncovery.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The Nuclear Regulatory Commission (NRC) staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Bradley J. Fewell, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Robert D. Carlson.

Florida Power and Light Company (FPL), Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Miami-Dade County, Florida

Date of amendment request: August 5, 2010.

Description of amendment request: The proposed amendments would revise technical specification (TS) 5.5.1 Fuel Storage—Criticality, to include new spent fuel storage patterns that account for both the increase in fuel maximum enrichment from 4.5 weight percentage (wt%) U–235 to 5.0 wt% U–235 and the impact on the fuel of higher power operation proposed under the Extended Power Uprate (EPU) project. Although the fuel storage has been analyzed at the higher fuel enrichment in the new criticality analysis, the fuel enrichment limit of 4.5 wt% U–235 specified in TS 5.5.1 will not be changed under this license amendment request. The proposed TS changes and a new supporting criticality analysis are being submitted to revise the current licensing basis analysis for both new fuel and spent fuel pool storage.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed amendments do not change or modify the fuel, fuel handling processes, fuel storage racks, number of fuel assemblies that may be stored in the spent fuel pool (SFP), decay heat generation rate, or the spent fuel pool cooling and cleanup system. The proposed amendment was evaluated for impact on the following previously evaluated events and accidents:

a. A fuel handling accident (FHA),
b. A cask drop accident,
c. A fuel mispositioning event,
d. A spent fuel pool boron dilution event,
e. A seismic event, and
f. A loss of spent fuel pool cooling event.

Although the proposed amendment will require increased handling of the fuel, the probability of a FHA is not significantly increased because the implementation of the proposed amendment will employ the same equipment and process to handle fuel assemblies that is currently used. Also, tests have confirmed that the Metamic inserts can be installed and removed without damaging the host fuel assemblies. The FHA radiological dose consequences associated with fuel enrichment at this level were addressed in LAR [license amendment request] 196 on Alternative Source Term implementation at EPU conditions and remain unchanged. Therefore, the proposed amendments do not significantly increase the probability or consequences of a FHA.

The proposed amendments do not increase the probability of dropping a fuel transfer cask because they do not introduce any new heavy loads to the SFP and do not affect heavy load handling processes. Also, the insertion of Metamic rack inserts does not increase the consequences of the cask drop accident because the radiological source term of that accident is developed from a non-mechanistically derived quantity of damaged fuel stored in the spent fuel pool. Therefore, the proposed amendments do not significantly increase the probability or consequences of a cask drop accident.

Operation in accordance with the proposed amendment will not change the probability of a fuel mispositioning event because fuel movement will continue to be controlled by approved fuel handling procedures. These procedures continue to require identification of the initial and target locations for each fuel assembly that is moved. The consequences of a fuel mispositioning event are not changed because the reactivity analysis demonstrates that the same subcriticality criteria and requirements continue to be met for the worst-case fuel mispositioning event.

Operation in accordance with the proposed amendment will not change the probability of a boron dilution event because the systems and events that could affect spent fuel pool soluble boron are unchanged. The consequences of a boron dilution event are unchanged because the proposed amendment reduces the soluble boron requirement below the currently required value and the maximum possible water volume displaced by the inserts is an insignificant fraction of the total spent fuel pool water volume.

Operation in accordance with the proposed amendment will not change the probability of a seismic event. The consequences of a seismic event are not significantly increased because the forcing functions for seismic excitation are not increased and because the mass of storage racks with Metamic inserts is not appreciably increased. Seismic analyses demonstrate adequate stress levels in the storage racks when inserts are installed.

Operation in accordance with the proposed amendment will not change the probability of a loss of SFP cooling event because the systems and events that could affect SFP cooling are unchanged. The consequences are not significantly increased because there are no changes in the SFP heat load or SFP cooling systems, structures or components. Furthermore, conservative analyses indicate that the current design requirements and criteria continue to be met with the Metamic inserts installed.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed amendments do not change or modify the fuel, fuel handling processes, fuel racks, number of fuel assemblies that may be stored in the pool,

decay heat generation rate, or the spent fuel pool cooling and cleanup system. The effects of operating with the proposed amendment are listed below. The proposed amendments were evaluated for the potential of each effect to create the possibility of a new or different kind of accident:

a. Addition of inserts to the fuel storage racks,

b. New storage patterns,

c. Additional weight from the inserts,

d. Insert movement above fuel, and

e. Displacement of fuel pool water by the inserts.

Each insert will be placed between a fuel assembly and the storage cell wall, taking up some of the space available on two sides of the fuel assembly. Tests confirm that the insert can be installed and removed without damaging the fuel assembly. Analyses demonstrate that the presence of the inserts does not adversely affect spent fuel cooling, seismic capability, or subcriticality. The aluminum (alloy 6061) and boron carbide materials of construction have been shown to be compatible with nuclear fuel, storage racks and spent fuel pool environments, and generate no adverse material interactions. Therefore, placing the inserts into the spent fuel pool storage racks cannot cause a new or different kind of accident.

Operation with the proposed fuel storage patterns will not create a new or different kind of accident because fuel movement will continue to be controlled by approved fuel handling procedures. These procedures continue to require identification of the initial and target locations for each fuel assembly that is moved. There are no changes in the criteria or design requirements pertaining to fuel storage safety, including subcriticality requirements, and analyses demonstrate that the proposed storage patterns meet these requirements and criteria with adequate margins. Therefore, the proposed storage patterns cannot cause a new or different kind of accident.

Operation with the added weight of the Metamic inserts will not create a new or different accident. The net effect of the adding the maximum number of inserts is to add less than one percent to the weight of the loaded racks. Furthermore, the analyses of the racks with Metamic inserts installed demonstrate that the stress levels in the rack modules continue to be considerably less than allowable stress limits. Therefore, the added weight from the inserts cannot cause a new or different kind of accident.

Operation with insert movement above stored fuel will not create a new or different kind of accident. The insert with its handling tool weighs considerably less than the weight of a single fuel assembly. Single fuel assemblies are routinely moved safely over fuel assemblies and the same level of safety in design and operation will be maintained when moving the inserts. Furthermore, the effect of a dropped insert to block the top of a storage cell has been evaluated in thermal-hydraulic analyses. Therefore, the movement of inserts cannot cause a new or different kind of accident.

Whereas the installed rack inserts will displace a very small fraction of the fuel pool water volume and impose a very small reduction in operator response time to previously-evaluated SFP accidents, the reduction will not promote a new or different kind of accident. Also, displacement of water along two sides of a stored fuel assembly may have some local reduction in the peripheral cooling flow; however, this effect would be small compared to the flow induced through the fuel assembly and would in no way promote a new or different kind of accident.

The accidents and events previously analyzed and presented in the Boraflex Remedy and Alternative Source Term LARs remain bounding.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in the margin of safety?

No. The proposed change was evaluated for its effect on current margins of safety as they relate to criticality, structural integrity, and spent fuel heat removal capability.

The margin of safety for subcriticality required by 10 CFR 50.68(b)(4) is unchanged. New criticality analysis confirms that operation in accordance with the proposed amendment continues to meet the required subcriticality margins.

The structural evaluations for the racks and spent fuel pool with Metamic inserts installed show that the rack and spent fuel pool are unimpaired by loading combinations during seismic motion, and there is no adverse seismic-induced interaction between the rack and Metamic inserts.

The proposed change does not affect spent fuel heat generation or the spent fuel pool cooling systems. A conservative analysis indicates that the design basis requirements and criteria for spent fuel cooling continue to be met with the Metamic inserts in place, and displacing coolant. Thermal hydraulic analysis of the local effects of an installed rack insert blocking peripheral flow show a small increase in local water and fuel clad temperatures, but will remain within acceptable limits including no departure from nucleate boiling.

Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

Based on the above discussion, FPL has determined that the proposed change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Branch Chief: Douglas A. Broaddus.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, *see* the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Virginia Electric and Power Company: Docket Nos. 50–338 and 50–339, North Anna Power Station, Unit Nos. 1 and 2, Located in Louisa County, Virginia; and 50–280 and 50–281, Surry Power Station, Unit Nos. 1 and 2, Located in Surry County, Virginia

Date of amendment request: May 6 and February 10, 2010.

Brief description of amendment request: The proposed amendments will add Optimized ZIRLO as an acceptable fuel rod cladding material and in addition, propose adding the Westinghouse topical report for Optimized ZIRLO to the analytical methods used to determine the core operating limits listed in the Technical Specifications.

Date of publication of individual notice in ***Federal Register:*** August 27, 2010 (75 FR 52781).

Expiration date of individual notice: Comments, September 27, 2010; Hearing, October 26, 2010.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating

License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action *see* (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1–(800) 397–4209, (301) 415–4737 or by e-mail to *pdr.resource@nrc.gov*.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Unit Nos. 1, 2, and 3, Maricopa County, Arizona

Date of application for amendment: October 30, 2009, as supplemented by letters dated April 29 and August 24, 2010.

Brief description of amendment: The amendments consisted of administrative changes to update the licenses and the technical specifications as a result of changes that were approved in previously issued amendments. The amendments removed requirements that are no longer applicable due to the completion of power uprates, the replacement of steam generators, the removal of part-length control element assemblies, the completion of the core protection calculator upgrade, and made a minor administrative change to the nomenclature of the containment sump trash racks and screens.

Date of issuance: September 10, 2010.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: Unit 1–179; Unit 2–179; Unit 3–179.

Facility Operating License Nos. NPF–41, NPF–51, and NPF–74: The amendment revised the Operating Licenses and Technical Specifications.

Date of initial notice in ***Federal Register:*** January 26, 2010 (75 FR 4113). The supplemental letters dated April 29 and August 24, 2010, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 10, 2010.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: November 19, 2009.

Brief description of amendment: The amendment revises the charcoal testing criteria in Technical Specification 5.5.9, "Ventilation Filter Testing Program."

Date of issuance: September 13, 2010.

Effective date: As of the date of issuance, and shall be implemented within 30 days.

Amendment No.: 265.

Facility Operating License No. DPR–26: The amendment revised the License and the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 26, 2010 (75 FR 4115).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 13, 2010.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: September 9, 2009.

Brief description of amendment: The amendment revised Technical Specification (TS) 3/4 .9.7, "Crane Travel—Fuel Handling Building," to permit certain operations needed for dry cask storage of spent nuclear fuel. Specifically, the proposed change to this TS, while continuing to prohibit travel of a heavy load over irradiated fuel assemblies in the spent fuel pool, would permit travel of loads in excess of 2,000 pounds over a transfer cask containing irradiated fuel assemblies, provided a single-failure-proof handling system is used.

Date of issuance: September 13, 2010.

Effective date: As of the date of issuance and shall be implemented prior to the start of the dry cask storage operations.

Amendment No.: 227.

Facility Operating License No. NPF–38: The amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register:*** November 17, 2009 (74 FR 59261). The supplemental letters dated June 8 and July 22, 2010, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register.**

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 13, 2010.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: October 22, 2009.

Brief description of amendment: The amendment modified the Technical Specifications (TS) Table 2.2–1 and Table 3.3–1. Specifically, the TS changes clarify TS Table 2.2–1 Notes (1) and (5), TS Table 3.3–1 Notes (a) and (c), and TS Table 3.3–1 Actions 2 and 3, which have resulted in Plant Protection System redundancy issues with respect to verbatim compliance. While the changes modified the table notations for the 10^{-4} percent Bistable in the Tables, they still maintain the safety function associated with the Core Protection Calculators and High Logarithmic Power trip functions, and with the small hysteresis for the 10^{-4} percent Bistable, there is a negligible impact on the Control Element Assembly withdrawal analysis. Additionally, the calculated peak power and heat flux are not significantly changed.

Date of issuance: September 13, 2010.

Effective date: As of the date of issuance and shall be implemented 90 days from the date of issuance.

Amendment No.: 228.

Facility Operating License No. NPF–38: The amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register:*** December 15, 2009 (74 FR 66384).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 13, 2010.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Units 1 and 2 (Braidwood), Will County, Illinois; Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2 (Byron), Ogle County, Illinois

Date of application for amendment: March 29, 2010.

Brief description of amendment: The amendments revise Technical Specification (TS) 5.5.7, "Reactor Coolant Pump Flywheel Inspection Program," to extend the reactor coolant pump (RCP) motor flywheel examination frequency from the currently-approved 10-year inspection interval to an interval not to exceed 20 years for certain Braidwood and Byron RCPs. These changes are consistent with TS Task Force (TSTF) traveler TSTF–421, "Revision to RCP Flywheel Inspection Program (WCAP–15666)," Revision 0, that has been approved generically for the Westinghouse Standard Technical Specifications, NUREG–1431. A notice announcing the availability of this proposed TS change using the Consolidated Line Item Improvement Process was published in the **Federal Register** on October 22, 2003 (68 FR 60422).

Date of issuance: September 16, 2010.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: Braidwood Unit 1–163; Braidwood Unit 2–163; Byron Unit No. 1–169; and Byron Unit No. 2–169.

Facility Operating License Nos. NPF–72, NPF–77, NPF–37, and NPF–66: The amendments revise the TSs and Licenses.

Date of initial notice in ***Federal Register:*** May 18, 2010 (75 FR 27827).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 16, 2010.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket No. 50–461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of application for amendment: April 2, 2010, as supplemented by letters dated June 19, 2009, and March 31, 2010.

Brief description of amendment: The amendment revises the Exelon Nuclear Radiological Emergency Plan Annex for Clinton Station, Table B–1, "Minimum Staffing Requirements for the On-Shift Clinton Station ERO," to increase the Non-Licensed Operator staffing from two to four, allow in-plant protective actions to be performed by personnel assigned to other functions, and replace a Mechanical Maintenance person with a Non-Licensed Operator.

Date of issuance: September 21, 2010.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 191.

Facility Operating License No. NPF–62: The amendment revised the Facility Operating License.

Date of initial notice in ***Federal Register:*** June 1, 2010 (75 FR 30445).

The June 19, 2009, and March 31, 2010, supplement, contained clarifying information and did not change the NRC staff's initial proposed finding of no significant hazards consideration.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 21, 2010.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: January 27, 2010, as supplemented by letters dated May 12, and May 13, 2010.

Brief description of amendments: The amendments would revise the Operating License and technical Specifications to implement an increase of approximately 1.65 percent in rated thermal power from the current licensed thermal power of 3489 megawatts thermal (MWt) to 3546 MWt.

Date of issuance: September 16, 2010.

Effective date: As of the date of issuance and shall be implemented within 90 days for Unit 1 and within 90 days of completion of refueling outage L2R13, which is currently scheduled for March 2011, for Unit 2.

Amendment Nos.: 198/185.

Facility Operating License Nos. NPF–11 and NPF–18: The amendments revised the Technical Specifications and License.

Date of initial notice in ***Federal Register:*** May 11, 2010 (75 FR 26289).

The May 12, and May 13, 2010, supplements, contained clarifying information and did not change the NRC staff's initial proposed finding of no significant hazards consideration.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 16, 2010.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 23rd day of September 2010.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–24815 Filed 10–4–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0312]

Issuance of Regulatory Guides

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice.

SUMMARY: The Nuclear Regulatory Commission (NRC) is providing notice of the issuance and availability of Regulatory Guides 1.84, Rev. 35, "Design, Fabrication, and Materials Code Case Acceptability, ASME Section III," and RG 1.147, Rev. 16, "Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1."

FOR FURTHER INFORMATION CONTACT: Wallace E. Norris, Component Integrity Branch, Division of Engineering, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 251–7650 or e-mail *Wallace.Norris@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is issuing two final Regulatory Guides (RGs) in the agency's "Regulatory Guide" series: RG 1.84 and RG 1.147. This series was developed to describe and make available to the public specific program information. This information includes methods acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques the staff uses in evaluating specific problems or postulated accidents, and data the staff needs in its review of applications for permits and licenses.

The NRC published a proposed rule that would incorporate by reference RG 1.84, Revision 35, and RG 1.147, Revision 16, on June 2, 2009, 74 FR 26303. On the same date, the NRC published a parallel notice of availability for the draft regulatory guides and opportunity for public comment. See, 74 FR 26440. The NRC provided a 75-day public comment period for both the proposed rule and the draft RGs, which ended on August 17, 2009.

This Notice of Issuance and Availability addresses final RGs 1.84 and 1.147. The final rule that incorporates RG 1.84 and RG 1.147 by reference into Title 10, part 50, of the *Code of Federal Regulations* (10 CFR Part 50), "Domestic Licensing of Production and Utilization Facilities" contains the regulatory analysis and responses to the public comments relative to the final RGs and is available in the NRC's Agencywide Documents Access and Management System (ADAMS) under Accession No. ML100560148. For further information on the final rule, contact Manash K. Bagchi, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–2905, e-mail *Manash.Bagchi@nrc.gov.*

This action allows nuclear power plant licensees, and applicants for standard design certifications, standard design approvals, and manufacturing licenses under the regulations that govern license certifications, and approves the nuclear power plants to use the Code Cases listed in these RGs as alternatives to requirements in the ASME Boiler and Pressure Vessel (BPV) Code regarding the construction and in-service inspection (ISI) of nuclear power plant components. RG 1.84 lists all Section III Code Cases that NRC has approved for use, and RG 1.147 lists all Section XI Code Cases that have been approved for use. For these RG revisions, NRC reviewed the Code Cases listed in Supplements 2B11 to the 2004 Edition of the ASME BPV Code and Supplement 0 to the 2007 Edition (Supplement 0 also serves as Supplement 12 to the 2004 Edition).

II. Further Information

Copies of the RGs are available in ADAMS under Accession Numbers ML101800532 (RG 1.84) and ML101800536 (RG 1.147). Electronic copies of RG 1.84 and RG 1.147 are available through the NRC=s public Web site under "Regulatory Guides" at *http://www.nrc.gov/reading-rm/doc-collections/.*

In addition, RGs are available for inspection at NRC's Public Document Room (PDR) located at 11555 Rockville Pike, Rockville, Maryland. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR also can be reached by telephone at (301) 415–4737 or (800) 397–4205, by fax at (301) 415–3548, and by e-mail to *pdr.resource@nrc.gov.*

Regulatory guides are not copyrighted and NRC approval is not required to reproduce them.

Dated at Rockville, Maryland, this 23rd day of September, 2010.

For the U.S. Nuclear Regulatory Commission.

Brian W. Sheron,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 2010–24812 Filed 10–4–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0311]

Issuance of Regulatory Guide

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice.

SUMMARY: The Nuclear Regulatory Commission (NRC) is providing notice of the issuance and availability of Regulatory Guide 1.193, Rev. 3, "ASME Code Cases Not Approved for Use."

FOR FURTHER INFORMATION CONTACT: Wallace E. Norris, Component Integrity Branch, Division of Engineering, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 251–7650 or e-mail *Wallace.Norris@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is issuing Regulatory Guide (RG) 1.193 in the agency's "Regulatory Guide" series. This series was developed to describe and make available to the public specific program information. This information includes methods acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques the staff uses in evaluating specific problems or postulated accidents, and data the staff needs in its review of applications for permits and licenses.

II. Discussion

RG 1.193 lists the Code Cases that NRC has determined not to be acceptable for use on a generic basis. Two separate RGs list Code Cases that NRC has found to be acceptable alternatives to requirements in the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code. RG 1.84, Rev. 35, "Design, Fabrication, and Materials Code Case Acceptability, ASME Section III," lists all Section III Code Cases that NRC has approved for use. RG 1.147, Rev. 16, "Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1," lists all Section XI Code Cases that NRC has approved for use. RG 1.84 and RG 1.147 are being noticed under a separate notice of availability.

For Revision 3 of RG 1.193, NRC reviewed the Code Cases listed in Supplements 2–11 to the 2004 Edition of the ASME Boiler and Pressure Vessel (BPV) Code and Supplement 0 to the 2007 Edition (Supplement 0 also serves as Supplement 12 to the 2004 Edition). A brief description of the basis for the unacceptability determination is provided with each Code Case in RG 1.193. Licensees may submit a request to implement one or more of the Code Cases listed in RG 1.193 through 10 CFR 50.55a(a)(3), which permits the use of alternatives to the Code requirements referenced in 10 CFR 50.55a provided that the proposed alternatives result in an acceptable level of quality and safety. Licensees must submit a plant-specific request that addresses NRC's concerns about the Code Case at issue.

III. Further Information

In June 2009, draft Regulatory Guide (DG) 1191, DG 1192, and DG 1193 were published with a public comment period of 60 days from their issuance. The comment period closed on August 16, 2009. Copies of the final RGs are available in ADAMS under Accession Numbers ML101800532 (RG 1.84), ML101800536 (RG 1.147), and ML101800540 (RG 1.193).

The responses to the public comments on the three RGs are contained in the final rule that incorporates RG 1.84 and RG 1.147 by reference into Title 10, part 50, of the *Code of Federal Regulations* (10 CFR part 50), "Domestic Licensing of Production and Utilization Facilities," and is available in NRC's Agencywide Documents Access and Management System (ADAMS) under Accession No. ML100560148. For further information on the final rule, contact Manash K. Bagchi, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–2905, e-mail *Manash.Bagchi@nrc.gov.*

Electronic copies of RG 1.84, RG 1.147, and RG 1.193 are available through NRC's public Web site under

"Regulatory Guides" at *http://www.nrc.gov/reading-rm/doc-collections/.*

In addition, RGs are available for inspection at NRC's Public Document Room (PDR) located at 11555 Rockville Pike, Rockville, Maryland. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR also can be reached by telephone at (301) 415–4737 or (800) 397–4205, by fax at (301) 415–3548, and by e-mail to *pdr.resource@nrc.gov.*

Regulatory guides are not copyrighted and NRC approval is not required to reproduce them.

Dated at Rockville, Maryland, this 6th day of August 2010.

For the Nuclear Regulatory Commission.

Harriet Karagiannis,

Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2010–24810 Filed 10–4–10; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Privacy Act of 1974: New System of Records

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Notice of a new system of records.

SUMMARY: OPM proposes to add OPM/Central-15, Health Claims Data Warehouse to its inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. This action is necessary to meet the requirements of the Privacy Act to publish in the Federal Register notice of the existence and character of records maintained by the agency. 5 U.S.C. 552a(e)(4).

DATES: This action will be effective without further notice on November 15, 2010 unless comments are received that would result in a contrary determination.

ADDRESSES: Send written comments to the Office of Personnel Management, ATTN: Gary A. Lukowski, Ph.D., Manager, Data Analysis, U. S. Office of Personnel Management, 1900 E Street, NW., Room 7439, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Gary A. Lukowski, Ph.D., Manager, Data Analysis, 202–606–1449.

SUPPLEMENTARY INFORMATION: The purpose of this system of records is to provide a central and comprehensive database from which OPM may analyze Federal Employee Health Benefit Program (FEHBP), National Pre-Existing Condition Insurance Program (program commencing August 2010), and Multi-State Option Plan (program commencing January 2014), costs and actively manage the programs to ensure the best value for both enrollees and taxpayers. OPM will collect, manage and analyze health services data on an ongoing basis by establishing regular data feeds for each of three programs. In many instances, the data will be de-identified for specific analyses that provide flexible queries of the data set for general demographic queries, risk-adjusted profiles, and comparison of chronically ill patients and other useful analytics; and engage in econometric modeling of, among other things, health trends, risk adjustment methodologies, pharmacy pricing, and negotiation.

U.S. Office of Personnel Management.

John Berry,

Director.

OPM CENTRAL–15

SYSTEM NAME:

Health Claims Data Warehouse.

SYSTEM LOCATION:

Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains or will subsequently contain records on three major health insurance programs including the Federal Employee Health Benefit Program (FEHBP); the National Pre-Existing Condition Insurance Program (NPECIP), and the Multi-State Option Plan. The FEHBP includes Federal employees, Postal employees, uniformed service members, retirees, and their family members who voluntarily participate in the Program. This system will also contain records on individuals eligible for and enrolled in the NPECIP in accordance with the Patient Protection and Affordable Care Act (Affordable Care Act) and implementing rules promulgated by the Department of Health and Human Services (DHHS). Through an interagency agreement, OPM will support DHHS in the development and operation of the NPECIP. This system will also contain information on individuals subsequently enrolled in the Multi-State Options also in accordance with the Affordable Care Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records in the system may contain the following types of information on a participating enrollees:

a. Personal Identifying Information (Name, Social Security Number, Date of Birth, Gender, Phone number etc)

b. Address (Current, Mailing)

c. Dependent Information (Spouse, Dependents and their addresses)

d. Employment information

e. Health Care Provider information including debarred provider information

f. Health care coverage information.

g. Health care procedure information.

h. Health care diagnosis information.

i. Provider charges and reimbursement information on the above coverage, procedures and diagnoses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority is provided by 5 U.S.C. 8910 and the Patient Protection and Affordable Care Act of 2010.

PURPOSE:

The purpose of this system of records is to provide a central and comprehensive database from which OPM may analyze Federal Employee Health Benefit Program (FEHBP), National Pre-Existing Condition Insurance Program (program commencing August 2010), and Multi-State Option Plan (program commencing January 2014), and actively manage all three programs to ensure the best value for the enrollees and taxpayers. OPM will collect, manage, and analyze health services data on an ongoing basis by establishing regular data feeds from the various plans. In many instances, the data will be de-identified for specific analyses that provide flexible queries of the data set for general demographic queries, risk-adjusted profiles, and comparison of chronically ill patients and other useful analytics; and engage in econometric modeling of, among other things, health trends, risk adjustment methodologies, pharmacy pricing, and negotiation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine uses 1, 3 through 7 of the Prefatory Statement at the beginning of OPM's system notices apply to the records maintained within this system.

1. For Law Enforcement Purposes—To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where OPM becomes aware of an

indication of a violation or potential violation of civil or criminal law or regulation.

3. For Congressional Inquiry—To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

4. For Judicial/Administrative Proceedings—To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Government is a party to the judicial or administrative proceeding. In those cases where the Government is not a party to the proceeding, records may be disclosed if a subpoena has been signed by a judge.

5. For National Archives and Records Administration—To disclose information to the National Archives and Records Administration for use in records management inspections.

6. Within OPM for Statistical/Analytical Studies—By OPM in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related workforce studies. While published studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

7. For Litigation—To disclose information to the Department of Justice or in a proceeding before a court, adjudicative body, or other administrative body before which OPM is authorized to appear, when:

(1) OPM, or any component thereof; or

(2) Any employee of OPM in his or her official capacity; or

(3) Any employee of OPM in his or her individual capacity where the Department of Justice or OPM has agreed to represent the employee; or

(4) The United States, when OPM determines that litigation is likely to affect OPM or any of its components; is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or OPM is deemed by OPM to be relevant and necessary to the litigation provided, however, that the disclosure is compatible with the purpose for which records were collected.

The routine uses listed below are specific to this system of records only:

1. To disclose to program and policy staff at the Office of Personnel Management to compile and analyze claims utilization data to identify sources of benefit and utilization costs and other information and to formulate health care program changes and enhancements to reduce cost increases, improve outcomes, improve efficiency in program administration and for other purposes.

2. To disclose to researchers and analysts inside and outside the Federal Government for the purpose of conducting research on health care and health insurance trends and topical issues.

POLICIES AND PRACTICES OF STORING, RETRIEVING, SAFEGUARDING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records will be maintained in electronic systems.

RETRIEVABILITY:

These records are retrieved by a combination of name and social security number of the individual on whom they are maintained.

SAFEGUARDS:

OPM restricts access to the records on the databases to employees who have the appropriate clearance and need-to-know to perform their official duties. Computerized records are located in a secured database on a secured system.

RETENTION AND DISPOSAL:

We maintain the records for 7 years. Computer records are destroyed by electronic erasure. A records retention schedule is currently being established with NARA.

SYSTEM MANAGER AND ADDRESS:

Gary A. Lukowski, Ph.D., Manager, Data Analysis, U. S. Office of Personnel Management, 1900 E Street, NW., Room 7439, Washington, DC 20415.

NOTIFICATION AND RECORD ACCESS PROCEDURE:

Individuals wishing to determine whether this system of records contains information about them may do so by writing to the U.S. Office of Personnel Management, FOIA Requester Service Center, 1900 E Street, NW., Room 5415, Washington, DC 20415–7900 or by e-mailing *foia@opm.gov.*

Individuals must furnish the following information for their records to be located:

1. Full name.
2. Date and place of birth.
3. Social Security Number.
4. Signature.
5. Available information regarding the type of information requested.
6. The reason why the individual believes this system contains information about him/her.
7. The address to which the information should be sent.

Individuals requesting access must also comply with OPM's Privacy Act regulations regarding verification of identity and access to records (5 CFR 297).

CONTESTING RECORD PROCEDURE:

Individuals wishing to request amendment of records about them should write to the Office of Personnel Management, ATTN: Gary A. Lukowski, Ph.D., Manager, Data Analysis, Room 7439, Washington, DC 20415, and furnish the following information for their records to be located:

1. Full name.
2. Date and place of birth.
3. Social Security Number.
4. City, state and zip code of their Federal Agency
5. Signature.
6. Precise identification of the information to be amended.

Individuals requesting amendment must also follow OPM's Privacy Act regulations regarding verification of identity and amendment to records (5 CFR 297).

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from health care providers used by the U. S. Office of Personnel Management to manage the FEHBP and high risk pools.

SYSTEM EXEMPTIONS:

None.

[FR Doc. 2010–24927 Filed 10–4–10; 8:45 am]

BILLING CODE 6325–46–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63002; File No. SR–ISE–2010–81]

Self-Regulatory Organizations; International Securities Exchange, LLC; Order Granting Approval of Proposed Rule Change Relating to Trading Options on a Reduced Value of the DAX Index, Including Long-Term Options

September 28, 2010.

I. Introduction

On August 3, 2010, the International Securities Exchange, Inc. (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission (the "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] a proposed rule

[1] 15 U.S.C. 78s(b)(1).

change to amend its rules to trade options on a reduced value DAX Index. The proposed rule change was published for comment in the **Federal Register** on August 18, 2010.[2] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description

The Exchange proposes to amend certain of its rules to allow the listing and trading of options on the Mini DAX, which represents 1/10 of the full value of the DAX Index. In addition to options on the Mini DAX, the Exchange proposes to list long-term options on the Mini DAX (the "Mini DAX LEAPS").[3] Options on the Mini DAX will be A.M. cash-settled and will have European-style exercise provisions.

Index Design and Composition

The DAX Index is a capitalization-weighted index where the weight of any individual component is proportional to its respective share in the total market capitalization of all the components. The DAX Index consists of the 30 most highly liquid and capitalized German stocks ranked by float-adjusted market capitalization.[4] The management board of Deutsche Börse AG ("DBAG") decides whether changes are to be made to the composition of the index on an annual basis in September but also performs quarterly reviews of the components' free float.

Index Calculation and Index Maintenance

Index levels for options on the Mini DAX will be calculated by DBAG or its agent, and disseminated by ISE every 15 seconds during the Exchange's regular trading hours to market information vendors via the Options Price Reporting Authority ("OPRA").[5] The level of the DAX Index reflects the float-adjusted market value of the component stocks relative to a particular base period and is computed by dividing the total market value of the companies in each index by its respective index divisor.[6]

The DAX Index is calculated using the last traded price of the component securities. If a component security does not open for trading, the price of that security at the close or the index on the previous day is used in the calculation.[7]

The DAX Index is currently updated on a real-time basis from 9 a.m. to 5:45 p.m. (Frankfurt time), which generally corresponds to 3 a.m. to 11:45 a.m. (New York time). The Exchange, or its agent, shall disseminate Mini DAX Index values via OPRA or major market data vendors between 3 a.m. and 11:45 a.m. (New York time). After 11:45 a.m. (New York time), the Exchange, or its agent, shall disseminate a static value of the Mini DAX until the close of trading each day.

The DAX Index is monitored and maintained by DBAG. DBAG makes all necessary adjustments to the indexes to reflect component deletions, share changes, stock splits, stock dividends (other than an ordinary cash dividend), and stock price adjustments due to restructuring, mergers, or spin-offs involving the underlying components.

The DAX Index is subject to a full review and, if necessary, ordinary adjustments are made once a year in September, where all components are screened for eligibility and ranked based on liquidity and market capitalization. Quarterly reviews are also performed in March, June, September and December, where components' free float levels are reviewed and extraordinary adjustments may be made. If a component company is deleted from the DAX Index between reviews as a result of a merger, takeover or other corporate action, the highest ranking company will replace it in the index.

The Exchange has represented that it will monitor the DAX Index on a quarterly basis. The Exchange will notify the staff of the Division of Trading and Markets of the Commission by filing a proposed rule change pursuant to Rule 19b–4 and will cease to list any additional series for trading, if, with respect to the DAX Index: (i) The number of securities in the DAX Index drops by 1/3 or more; (ii) 10% or more of the weight of the DAX Index is represented by component securities having a market value of less than €50 million; (iii) 10% or more of the weight of the DAX Index is represented by component securities trading less than 20,000 shares per day; or (iv) the largest component security accounts for more than 15% of the weight of the DAX Index or the largest five components in the aggregate account for more than 50% of the weight of the DAX Index.

The Exchange will also notify the staff of the Division of Trading and Markets of the Commission immediately in the event DBAG ceases to maintain and calculate the DAX Index, or in the event values of the DAX Index are not disseminated every 15 seconds by a widely available source. In such cases, the Exchange will not list any additional series for trading and will limit all transactions in the options to closing transactions for the purpose of maintaining a fair and orderly market and protecting investors.

Contract Specifications

The Mini DAX is a broad-based index. Options on the Mini DAX are European-style and A.M. cash-settled. The Exchange's standard trading hours for broad-based index options (9:30 a.m. to 4:15 p.m., New York time), as set forth in ISE Rule 2008(a), will apply to the trading of options on the Mini DAX.

The Exchange proposes to list options on the Mini DAX in the three consecutive near-term expiration months, plus up to three successive expiration months in the March cycle. For example, consecutive expirations of January, February, March, plus June, September, and December expirations would be listed.[8]

The Exchange proposes to set minimum strike price intervals for Mini DAX options at 1 point intervals. The minimum tick size for series trading below $3 shall be $0.05, and for series trading at or above $3 shall be $0.10.

Exercise and Settlement Value

Options on the Mini DAX will expire on the Saturday following the third Friday of the expiration month. Trading in options on the Mini DAX will normally cease at 4:15 p.m. (New York time) on the Thursday preceding an expiration Saturday. The index value for exercise of the Mini DAX options will be calculated by DBAG based on the Xetra intra-day auction prices for each of the component companies. That value is also used as the basis for

[2] *See* Securities Exchange Act Release No. 62703 (August 12, 2010), 75 FR 51134.

[3] Under ISE Rule 2009(b), "Long-Term Index Options Series," the Exchange may list long-term options that expire from 12 to 60 months from the date of issuance.

[4] Float-adjusted market capitalization (as opposed to an unadjusted methodology) refers to the number of free-float shares available multiplied by the share price. A "free-float" index methodology usually excludes shares held by strategic investors by way of cross ownership, government ownership, private ownership and restricted share ownership.

[5] The Exchange shall also disseminate these values to its members.

[6] A divisor is an arbitrary number chosen at the starting date of an index to fix the index starting value. The divisor is adjusted periodically when capitalization amendments are made to the constituents of the index in order to allow the index value to remain comparable over time. Without a divisor the index value would change when corporate actions took place and would not reflect the true value of an underlying portfolio based upon the index.

[7] The DAX Index is published daily and is available real-time on ThomsonReuters, Bloomberg, and other market information systems which disseminate information on a real time basis.

[8] *See* Rule ISE 2009(a)(3).

settlement of DAX Index futures and options contracts traded on Eurex.

The intra-day auction occurs between 1 p.m. and 1:05 p.m. (German time) on the third Friday of the expiration month, which generally corresponds to 7 a.m. to 7:05 a.m. (New York time). Therefore, because trading in the expiring contract months will normally cease on a Thursday at 4:15 p.m. (New York time), the index value for exercise will be determined the day after trading has ceased, *i.e.,* during the Friday afternoon Xetra trading session, or generally by 7:05 a.m. (New York time). If no price is established for a component company during the Xetra intraday auction, then the next available price is used. If no price is available by the end of the Xetra trading session then the last price available is used for calculation. When the auction is finished, the index values are disseminated as the settlement values. The settlement values are widely disseminated through major market data vendors including ThomsonReuters and Bloomberg.

If the Frankfurt Stock Exchange is closed on the Friday before expiration, but the ISE remains open, then the last trading day for expiring Mini DAX options will be moved earlier to Wednesday as if the ISE had had a Friday holiday. The settlement index value used for exercise will be calculated during Xetra's intra-day auction on Thursday morning.

Position Limits

For options on the Mini DAX, the Exchange proposes to establish aggregate position limits at 250,000 contracts on the same side of the market, provided no more than 150,000 of such contracts are in the nearest expiration month series. Additionally, under ISE Rule 2006, an index option hedge exemption for public customers may be available which may expand the position limit up to an additional 750,000 contracts.[9] Furthermore, proprietary accounts of members may receive an exemption of up to 500,000 contracts for the purpose of facilitating public customer orders.[10]

Exchange Rules Applicable

Exchange rules that are applicable to the trading of options on broad-based indexes will also apply to the trading of Mini DAX options.[11] Specifically, the trading of Mini DAX options will be subject to, among others, Exchange rules governing margin requirements and trading halt procedures for index options.

The Exchange proposes to apply broad-based index margin requirements for the purchase and sale of options on the Mini DAX. Accordingly, purchases of put or call options with nine months or less until expiration must be paid for in full. Writers of uncovered put or call options must deposit/maintain 100% of the option proceeds, plus 15% of the aggregate contract value (current index level × $100), less any out-of-the-money amount, subject to a minimum of the option proceeds plus 10% of the aggregate contract value for call options and a minimum of the option proceeds plus 10% of the aggregate exercise price amount for put options.

The trading of options on the Mini DAX shall be subject to the same rules that presently govern the trading of Exchange index options, including sales practice rules, margin requirements, trading rules, and position and exercise limits. In addition, long-term option series having up to sixty months to expiration may be traded.[12] The trading of long-term Mini DAX options shall also be subject to the same rules that govern the trading of all the Exchange's index options, including sales practice rules, margin requirements, and trading rules.

Chapter Six of the Exchange's rules is designed to protect public customer trading and shall apply to the trading of options on the Mini DAX. Specifically, ISE Rules 608(a) and (b) prohibit Members from accepting a customer order to purchase or write an option unless such customer's account has been approved in writing by a designated Options Principal of the Member.[13] Additionally, ISE's Rule 610 regarding suitability is designed to ensure that options are only sold to customers capable of evaluating and bearing the risks associated with trading in this instrument. Further, ISE Rule 611 permits members to exercise discretionary power with respect to trading options in a customer's account only if the Member has received prior written authorization from the customer and the account had been accepted in writing by a designated Options Principal. ISE Rule 611 also requires designated Options Principals or Representatives of a Member to approve and initial each discretionary order on the day the discretionary order is entered. Finally, ISE Rule 609, Supervision of Accounts, Rule 612, Confirmation to Customers, and ISE Rule 616, Delivery of Current Options Disclosure Documents and Prospectus, will also apply to trading in of options on the Mini DAX.

Capacity

The Exchange has represented that it has the necessary systems capacity to support new options series that will result from the introduction of options on the Mini DAX, including LEAPS.

Surveillance

The Exchange has represented that it has an adequate surveillance program in place for options traded on the Mini DAX. Index products and their respective symbols are integrated into the Exchange's existing surveillance system architecture and are thus subject to the relevant surveillance processes. Further, both ISE and the Frankfurt Stock Exchange, operated by DBAG, are members of the Intermarket Surveillance Group ("ISG"). Through its membership in the ISG, ISE may obtain trading information via the ISG from other exchanges who are members or affiliates of the ISG.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[14] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[15] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

As a national securities exchange, the ISE is required, under Section 6(b)(1) of the Act,[16] to enforce compliance by its members, and persons associated with its members, with the provisions of the Act, Commission rules and regulations thereunder, and its own rules. In addition, brokers that trade Mini DAX options will also be subject to best

[9] The same limits that apply to position limits shall apply to exercise limits for these products.

[10] *See* ISE Rule 413(c).

[11] *See* ISE Rules 2000 through 2012.

[12] *See* Rule 2009(b)(1). The Exchange is not listing reduced value LEAPS on the Mini DAX pursuant to Rule 2009(b)(2).

[13] Pursuant to ISE Rule 602, Representatives of a Member may solicit or accept customer orders for FCOs.

[14] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation.

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78f(b)(1).

execution obligations and FINRA rules.[17] Applicable exchange rules also require that customers receive appropriate disclosure before trading Mini DAX options.[18] Furthermore, brokers opening accounts and recommending options transactions must comply with relevant customer suitability standards.[19]

The trading of options on the Mini DAX will be subject to the same rules that currently govern the trading of Exchange index options, as will the trading of long-term Mini DAX options. The Commission believes that the listing rules proposed by ISE are consistent with the Act. One point strike price intervals for Mini DAX options should provide investors with flexibility in the trading of Mini DAX options and further the public interest by allowing investors to establish positions that are better tailored to meet their investment objectives. The listing of options on a reduced value should provide an opportunity for investors to hedge, or speculate on, the market risk associated with the stocks comprising the DAX Index, and with the reduction in the value of the DAX Index, investors will be able to use this trading vehicle while extending a smaller outlay of capital. This may attract additional investors, and, in turn, create a more active and liquid trading environment.

The Commission notes that index levels for options on the Mini DAX will be calculated by DBAG, or its agent, and updated on a real time basis, and will be disseminated by ISE at 15-second intervals to market information vendors via OPRA.

The Commission believes that the Exchange's proposed position and exercise limits for Mini DAX Options are appropriate and consistent with the Act. The Commission also notes that ISE has represented that it has an adequate surveillance program to monitor trading of Mini DAX Options and intends to apply its existing surveillance program to support the trading for these options.

Finally, the Commission believes that the proposal strikes a reasonable balance between the Exchange's desire to offer a wider array of products with the need to avoid unnecessary proliferation of options series and the corresponding increase in quotes. In approving the proposed rule change, the Commission has relied on the Exchange's representation that it has the necessary systems capacity to support the new options series that will be listed under this proposal. This approval order is conditioned on ISE's adherence to this representation. The Commission expects the Exchange to continue to monitor for options with little or no open interest and trading activity and to act promptly to delist such options. In addition, the Commission expects that ISE will monitor the trading volume associated with the additional options series listed as a result of this proposal and the effect of these additional series on market fragmentation and on the capacity of the Exchange's, OPRA's, and vendors' automated systems.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[20] that the proposed rule change (SR–ISE–2010–81) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–24882 Filed 10–4–10; 8:45 am]

BILLING CODE 8010–01–P

[17] *See* NASD Rule 2320.

[18] *See* ISE Rule 616.

[19] *See* ISE Rule 610. *See also* ISE Rulebook Chapter Six for rules designed to protect public customer trading that shall apply to the trading of options on the Mini DAX.

[20] 15 U.S.C. 78s(b)(2).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63005; File No. SR–NSCC–2010–10]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To clarify Its Rules & Procedures Regarding Its Alternative Investment Product Service

September 29, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on September 20, 2010, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by NSCC. NSCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[2] and Rule 19b–4(f)(4) thereunder[3] so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(iii).

[3] 17 CFR 240.19b–4(f)(4).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends NSCC's rules to clarify that an Alternative Investment Product ("AIP") Service prospective member is not required to designate a settling bank in order to become an AIP member.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC 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. AIP Service

In 2007, NSCC filed a rule change with the Commission that established the AIP Service, which is a processing platform for alternative investment products such as hedge funds, fund of hedge funds, commodities pools, managed futures, and real estate investment trusts.[4] The AIP Service provides for settlement of related payments ("AIP Payments") such as subscriptions and redemptions, activity, distributions, and commissions for AIPs. The AIP Service also supports communication of information and settlement of AIP Payments between the AIP Manufacturer[5] and the AIP Distributor[6] to facilitate processing of subscriptions and purchases, tenders and redemptions, dividends and distributions, commissions and fees, positions reporting, product information, account maintenance, automated transmission of imaged

[4] Securities and Exchange Act Release No. 57813 (May 12, 2008), 73 FR 28539 (May 16, 2008).

[5] NSCC Rule 53 defines an AIP Manufacturer as an AIP Member acting on behalf of or under authority of the sponsor, general partner, or any other party responsible for the creation or manufacturing of an Eligible AIP Product.

[6] NSCC Rule 53 defines an AIP Distributor as an AIP Member acting on behalf of or under authority of a customer or other investor in an Eligible AIP Product, or otherwise as the contra-side to an AIP Manufacturer in a transaction (including information processing) with an AIP Manufacturer.

documents, and such other services as NSCC may determine from time to time. AIP Members may transmit data in connection with transactions for which the payments are made outside of NSCC or are made through NSCC at their option.

2. AIP Settlement

Prior to this rule change, NSCC Rule 53, Section 7, paragraph (h), provided that unless "otherwise permitted by [NSCC], each AIP Member shall appoint an AIP Settling Bank for the purpose of settling with [NSCC] on behalf of the AIP Member pursuant to an AIP Settling Bank Agreement." This settlement bank provision was implemented in the initial AIP Service rule filing to accommodate the stringent settlement rules implemented for the AIP Service. AIP settlement is segregated from all other NSCC settlement obligations and is settled on a gross debit/gross credit basis. In other words, each AIP Service participant must fully fund its debits before receiving its credit. In the event of a failure, NSCC does not fund the credits but rather begins the AIP reversal process. The AIP Service's prefunded settlement mitigates NSCC's risk. This settling bank provision was also included in the original AIP Service filing because participants were initially required to settle all NSCC invoices with their settlement obligation.

3. Clarification of Settling Bank Provision in Rule 53

Since the implementation of the AIP Service, a significant number of prospective participants view its reporting functionality as a key first step in use of the AIP Service. These AIP prospects have expressed their interest in becoming AIP members in order to participate in the transmission of AIP Data but not the settling functions of the AIP Service.[7]

In response to this feedback, NSCC has developed a functionality that can designate AIP Service members as "non-settling" members that use the AIP Service for messaging only. Position and Activity-Distribution and Commission are typically "non-settling," and strictly reporting functions. Requiring these prospective participants to designate a settling bank simply for payment of NSCC bills is a hindrance to product adoption and is cost prohibitive. Additionally, the current list of NSCC settling banks accepting new clients is limited, and those settling banks willing to accept new settlement business have requested large monthly fees from the AIP prospects.

The AIP Service has now been appropriately configured to allow for prospective members to apply for membership without designating a settling bank. If a participant is established by NSCC's Account Administration department on the Entity Master File ("EMF") without a settling bank's ABA number, EMF notifies the AIP Service that the participant is non-settling. The AIP Service retains a table of the non-settling participants and validates all settlement files created by the application against the table. If a participant without a settling bank erroneously indicates settlement, no settlement file will be created or sent to settlement. The transaction will continue through normal AIP processing as non-settling.

AIP Service participants that do not intend to use its settling function will no longer be required to settle their NSCC invoices in their settlement obligations. Those participants that are designated "non-settling" members will be permitted to use alternative means of payment as designated from time to time by NSCC. Current methods of payment include DTCC ePayment for NSCC Invoices (which allows participants without a settling bank to authorize payment of NSCC Invoices through debit to an ACH-accessible commercial account at a U.S. bank) or credit card.

4. Implementation Time Frame

NSCC will advise its members of the changes to the Rule 53 clarification that settling bank designation is not a requirement for AIP Service membership through the issuance of an NSCC Important Notice.

NSCC states that Section 17A(b)(3)(F) of the Act[8] requires, among other things, that the rules of a clearing agency be designed to remove impediments to and perfect the mechanism of a national system for prompt and accurate clearance and settlement of securities transactions. NSCC believes that this proposed rule change, which seeks to clarify NSCC Rule 53, will remove an impediment to the AIP Service membership process.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NSCC has not solicited or received written comments relating to the proposed rule change. NSCC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[9] and Rule 19b–4(f)(4)[10] thereunder because it effects a change in an existing service of a registered clearing agency that does not adversely affect the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible and does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–NSCC–2010–10 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission,

[7] NSCC Rule 53 provides that "AIP Data transmitted through the AIP Service may include data relating to subscriptions and purchases; redemptions, withdrawals and tender offers; commissions and other fees; distributions; exchange transactions; transfers; position reporting; product information; account maintenance, valuation, and activity and such other data as may be established by the Corporation from time to time."

[8] 15 U.S.C. 78–1(b)(3)(F).

[9] Above note 2.

[10] Above note 3.

Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NSCC–2010–10. 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 such filing also will be available for inspection and copying at NSCC's principal office and on NSCC's Web site at *http://www.dtcc.com/legal/rule_filings/nscc/2010.php.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NSCC–2010–10 and should be submitted on or before October 26, 2010.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary .

[FR Doc. 2010–24884 Filed 10–4–10; 8:45 am]

BILLING CODE 8010–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63001; File No. SR–CBOE–2010–85]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Increase the Class Quoting Limit in One Option Classes

September 28, 2010.

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 September 16, 2010, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II, which Items have been prepared by the CBOE. The Exchange has designated this proposal as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule under Section 19(b)(3)(A)(i) of the Act,[3] and Rule 19b–4(f)(1) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to increase the class quoting limit in one option class. The text of the proposed rule change is available on CBOE's Web site (*http://www.cboe.org/legal*), at the CBOE's Office of the Secretary, and at the Commission's public reference room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE Rule 8.3A, Maximum Number of Market Participants Quoting Electronically per Product, establishes class quoting limits ("CQLs") for each class traded on the Hybrid Trading System.[5] A CQL is the maximum number of quoters that may quote electronically in a given product and Rule 8.3A, Interpretation .01(a) provides that the current levels are generally established at 50.

In addition, Rule 8.3A, Interpretation .01(b) provides a procedure by which the President of the Exchange may increase the CQL for an existing or new product. In this regard, the President of the Exchange may increase the CQL in a particular product when he deems it appropriate. The effect of an increase in the CQL is procompetitive in that it increases the number of market participants that may quote electronically in a product. The purpose of this filing is to increase the CQL in options on the CBOE Volatility Index (VIX) from its current limit of 50 to 60, which CBOE's President has determined would be appropriate.[6] Increasing the CQL also may enhance the liquidity offered in the option class. Lastly, CBOE represents that it has the systems capacity to support this increase in the CQL.

2. Statutory Basis

CBOE believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[8] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest. As indicated above, the Exchange believes that increasing the CQL in this

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

[5] *See* Rule 8.3A.01.

[6] CBOE's President has determined that this increase would be appropriate, in part, due to the relocation of several option classes, including VIX, to a larger trading station on the trading floor which may enhance the liquidity offered in the option class. E-mail dated September 28, 2010, from Patrick Sexton, Associate General Counsel, CBOE.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

option class is procompetitive and may enhance the liquidity offered.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE 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 Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither received nor solicited written comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change will take effect upon filing with the Commission pursuant to Section 19(b)(3)(A)(i) of the Act[9] and Rule 19b–4(f)(1) thereunder,[10] because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule.

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–CBOE–2010–85 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2010–85. 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 such filing also will be available for inspection and copying at the principal office of the CBOE. 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–CBOE–2010–85 and should be submitted on or before October 26, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–24895 Filed 10–4–10; 8:45 am]

BILLING CODE 8010–01–P

[9] 15 U.S.C. 78s(b)(3)(A)(i).

[10] 17 CFR 240.19b–4(f)(1).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63007; File No. SR–NASDAQ–2010–121]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Fees for Members Using the NASDAQ Market Center

September 29, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 28, 2010, The NASDAQ Stock Market LLC ("NASDAQ") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDAQ. 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 the Substance of the Proposed Rule Change

NASDAQ proposes to modify pricing for NASDAQ members using the NASDAQ Market Center. NASDAQ will implement the proposed change on October 1, 2010. 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, NASDAQ 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. NASDAQ 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

NASDAQ is amending Rule 7018 to make modifications to its pricing schedule for execution and routing of orders in securities priced at $1 or more through the NASDAQ Market Center.[3] First, NASDAQ is introducing a new rebate tier for members providing liquidity through the NASDAQ Market Center. The new tier is available to members providing a daily average of more than 20 million shares of liquidity during the month, including a daily average of more than 8 million shares provided with respect to securities that are listed on exchanges other than NASDAQ or the New York Stock Exchange ("Tape B Securities"). Members qualifying for this tier will receive a rebate of $0.0015 per share executed for quotes/orders that are not displayed, and $0.0029 per share

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Fees and credits for execution and routing of orders in securities priced below $1 remain unchanged.

executed for other quotes/orders. NASDAQ is making this change in order to encourage greater levels of liquidity provision in Tape B Securities.

Second, NASDAQ is modifying the rebate tier for members (i) providing a daily average of more than 25 million shares of liquidity through the NASDAQ Market Center and (ii) accessing more than 200,000 options contracts through the NASDAQ Options Market. Currently, a member that qualified for this tier would receive $0.0029 per share executed for providing liquidity through the NASDAQ Market Center. The tier is being modified so that the rebate will be $0.0015 per share executed for quotes/orders that are not displayed, but will remain $0.0029 per share executed for other quotes/orders. This change will make the tier more consistent with other tiers that provide a lower rebate with respect to non-displayed quotes/orders.

Third, NASDAQ is modifying the conditions under which a member may qualify for the most favorable liquidity provider rebate tier, under which members earn $0.00295 per share executed for displayed quotes/orders and $0.0015 per share executed for non-displayed quotes/orders. Currently, a member qualifies for this tier if it provides a daily average of more than 95 million shares of liquidity during the month. Under the proposed change, the required level of liquidity provision will vary depending on overall market volumes during the month. Thus, a member will qualify for the rebate if it has a daily average volume during the month of (i) more than 95 million shares of liquidity provided, if average total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities is more than 10 billion shares per day during the month, (ii) more than 85 million shares of liquidity provided, if average total consolidated volume is between 9,000,000,001 and 10 billion shares per day during the month, (iii) more than 75 million shares of liquidity provided, if average total consolidated volume is between 8,000,000,001 and 9 billion shares per day during the month, or (iv) more than 65 million shares of liquidity provided, if average total consolidated volume is 8 billion or fewer shares per day during the month. The change is expected to increase the number of firms qualifying for the most favorable rebate tier during months when overall trading volumes are lower, by allowing the required level of liquidity provision to vary with overall trading volumes.

Finally, NASDAQ is making minor modifications to its routing fees to reflect the imminent launch of cash equities trading on NASDAQ OMX PSX ("PSX"), a new facility of NASDAQ OMX PHLX LLC, NASDAQ's sister exchange. The changes will result in routing fees to PSX that are similar to fees already in place for routing to NASDAQ OMX BX. Specifically, the fee for routing directed orders to PSX will be $0.0015 per share executed.[4] In addition, the fee for routing to PSX using NASDAQ's SAVE and TFTY routing strategies will consist of a pass through of the fee charged by PSX to access liquidity there (currently $0.0013 per share executed).

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and with Section 6(b)(4) of the Act,[6] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls. The impact of the price changes upon the net fees paid by a particular market participant will depend upon a number of variables, including the prices of the market participant's quotes and orders relative to the national best bid and offer (*i.e.,* its propensity to add or remove liquidity), the types of securities that it trades, its usage of non-displayed quotes/orders, its trading volumes, and overall market volumes.

NASDAQ notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. Accordingly, if particular market participants object to the proposed fee changes, they can avoid paying the fees by directing orders to other venues. NASDAQ believes that its fees continue to be reasonable and equitably allocated to members on the basis of whether they opt to direct orders to NASDAQ.

[4] PSX will charge a fee of $0.0013 per share executed to access liquidity, so the routing fee of $0.0015 reflects a small markup on the fee that PSX charges NASDAQ's routing broker. By contrast, BX pays a rebate to firms accessing liquidity, so NASDAQ's routing fee of $0.0002 per share executed similarly allows it to receive revenue for routing directed orders. By contrast, when routing using certain specific routing strategies, NASDAQ foregoes revenue and passes through the applicable access fees or rebates.

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4).

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Because the market for order execution and routing is extremely competitive, members may readily direct orders to NASDAQ's competitors if they object to the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[7] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2010–121 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–2010–121. This

[7] 15 U.S.C. 78s(b)(3)(a)(ii).

file number should be included on the subject line if e-mail is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices 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–2010–121, and should be submitted on or before October 26, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63010; File No. SR–NASD–2003–140]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 4 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 Through 4, Relating to the Prohibition of Certain Abuses in the Allocation and Distribution of Shares in Initial Public Offerings ("IPOs")

September 29, 2010.

I. Introduction

On September 15, 2003, the National Association of Securities Dealers, Inc. ("NASD") (n/k/a the Financial Industry Regulatory Authority, Inc. ("FINRA")) filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt new FINRA Rule 5131 (originally proposed as NASD Rule 2712) to further and more specifically prohibit certain abuses in the allocation and distribution of shares in initial public offerings ("IPOs"). NASD amended the proposed rule change on December 9, 2003 and August 4, 2004. On February 10, 2010, FINRA filed with the Commission Amendment No. 3 to SR–NASD–2003–140.[3] The Commission published the proposed rule change, as modified by Amendment No. 3, for comment in the **Federal Register** on March 18, 2010.[4] The Commission received three comment letters in response to the proposed rule change.[5] On July 30, 2010, FINRA responded to the comment letters and filed Amendment No. 4 to the proposed rule change. The Commission is publishing this notice and order to solicit comments on Amendment No. 4, and to approve the proposed rule change, as modified by Amendment Nos. 1 through 4, on an accelerated basis.

II. Description of Proposal

a. Quid Pro Quo Allocations

Proposed FINRA Rule 5131(a) would prohibit any member or person associated with a member from offering or threatening to withhold shares it allocates of a new issue as consideration or inducement for the receipt of compensation that is excessive in relation to the services provided by the member.

b. Prohibition on Spinning

Proposed FINRA Rule 5131(b) would prohibit the allocation of new issue shares to the account of an executive officer or director of a company (1) if the company is currently an investment banking services client of the member or the member has received compensation from the company for investment banking services in the past 12 months; (2) if the member intends to provide, or expects to be retained by the company for, investment banking services within the next 3 months; or (3) on the express or implied condition that such executive officer or director, on behalf of the company, will retain the member for the performance of future investment banking services.

FINRA also proposes that members establish, maintain and enforce policies and procedures reasonably designed to ensure that investment banking personnel have no involvement or influence, directly or indirectly, in the new issue allocation decisions of the member. The spinning provision would apply to any account in which an executive officer or director of a public company or a "covered non-public company," or a person materially supported by such executive officer or director, has a beneficial interest. The term "covered non-public company" would mean any non-public company satisfying the following criteria: (i) Income of at least $1 million in the last fiscal year or in two of the last three fiscal years and shareholders' equity of at least $15 million; (ii) shareholders' equity of at least $30 million and a two-year operating history; or (iii) total assets and total revenue of at least $75 million in the latest fiscal year or in two of the last three fiscal years.[6] FINRA also proposes to prohibit new issue allocations only where the person responsible for making the allocation decision "knows or has reason to know that the member intends to provide, or expects to be retained by the company for, investment banking services within the next 3 months."

In addition, to facilitate compliance with the spinning provisions as requested by commenters, proposed new Supplementary Material .02 would expressly permit members to rely on written representations obtained within

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 50896 (Dec. 20, 2004), 69 FR 77804 (Dec. 28, 2004).

[4] *See* Securities Exchange Act Release No. 61690 (March 11, 2010), 75 FR 13176 (March 18, 2010) ("Amendment No. 3").

[5] *See* Letter from Jeffrey W. Rubin, Chair, Committee on Federal Regulation of Securities, Business Law Section, American Bar Association ("ABA"), to Elizabeth M. Murphy, Secretary, SEC, dated April 6, 2010; Letter from Sean Davy, Managing Director, Corporate Credit Markets Division, Securities Industry Financial Markets Association ("SIFMA"), to Elizabeth M. Murphy, Secretary, SEC, dated April 8, 2010; and Letter from Ross M. Langill, Chairman & CEO, Regal Bay Investment Group LLC ("Regal"), to Elizabeth M. Murphy, Secretary, SEC, dated April 8, 2010.

[6] These criteria are based on quantitative initial listing standards for a national securities exchange, which FINRA believes is a suitable proxy for the types of companies that are likely to be targeted by members for investment banking services. In this case, FINRA has determined that the applicable standards should be no less than those required for initial listing on the NASDAQ Global Market. FINRA further believes that, in modifying the scope of companies covered by the spinning provisions, it is unnecessary to create a *de minimis* standard for investment banking services compensation as urged by ABA. Moreover, FINRA also believes that a *de minimis* standard would pose additional compliance burdens and would be susceptible to abuse by those seeking to avoid application of the proposed rule.

the prior 12 months from the beneficial owner(s) of the account (or a person authorized to represent the beneficial owner(s)) as to whether such beneficial owner(s) is an executive officer or director (or person materially supported by an executive officer or director) and if so, the company(ies) on whose behalf such executive officer or director serves. FINRA requires that the initial representation be an affirmative representation, but will permit such representation to be updated annually through the use of negative consent letters. Finally, a member would be required to maintain a copy of all records and information relating to whether an account is eligible to receive an allocation of the new issue for at least three years following the member's allocation to that account.

FINRA also proposes to include a limitation in the spinning rule providing that the spinning prohibitions would not apply to allocations made to any account described in FINRA Rule 5130(c)(1) through (3) and (5) through (10), or to any other account in which the beneficial interests of executive officers and directors of the company and persons materially supported by such executive officers and directors in the aggregate do not exceed 25% of such account.[7] FINRA also proposes to add a new definition of "beneficial interest," which would have the same meaning as FINRA Rule 5130.[8]

FINRA proposes to use the term "new issue" throughout the proposed rule and to use the same definition provided in FINRA Rule 5130(i)(9). Thus, the proposed rule, as amended, would apply to "new issues," meaning "any initial public offering of an equity security as defined in Section 3(a)(11) of the Act, made pursuant to a registration statement or offering circular." As such, the proposed definition of "new issue" would exclude:

- Offerings made pursuant to an exemption under Section 4(1), 4(2) or 4(6) of the Securities Act of 1933 ("Securities Act"), or Securities Act Rule 504 if the securities are "restricted securities" under Securities Act Rule 144(a)(3), or Rule 144A or Rule 505 or Rule 506 adopted thereunder;
- Offerings of exempted securities as defined in Section 3(a)(12) of the Act, and rules promulgated thereunder;
- Offerings of securities of a commodity pool operated by a commodity pool operator as defined under Section 1a(5) of the Commodity Exchange Act;
- Rights offerings, exchange offers, or offerings made pursuant to a merger or acquisition;
- Offerings of investment grade asset-backed securities;
- Offerings of convertible securities;
- Offerings of preferred securities;
- Offerings of an investment company registered under the Investment Company Act of 1940 ("Investment Company Act");
- Offerings of securities (in ordinary share form or ADRs registered on Form F–6) that have a pre-existing market outside of the United States; and
- Offerings of a business development company as defined in Section 2(a)(48) of the Investment Company Act, a direct participation program as defined in Rule 2310(a) or a real estate investment trust as defined in Section 856 of the Internal Revenue Code.

c. Policies Concerning Flipping

Proposed FINRA Rule 5131(c)(1) would prohibit members or persons associated with a member from directly or indirectly recouping, or attempting to recoup, any portion of a commission or credit paid or awarded to an associated person for selling shares of a new issue that are subsequently flipped by a customer, unless the managing underwriter has assessed a penalty bid on the entire syndicate. Moreover, proposed FINRA Rule 5131(c)(2) would require, in addition to any obligation to maintain records relating to penalty bids under SEA Rule 17a–2(c)(1), that members promptly record and maintain information regarding any penalties or disincentives assessed on its associated persons in connection with a penalty bid.

d. IPO Pricing and Trading Practices

(1) Indications of Interest

Proposed FINRA Rule 5131(d)(1) would require, in a new issue, the book-running lead manager to provide to the issuer's pricing committee (or, if the issuer has no pricing committee, its board of directors): (1) A regular report of indications of interest, including the names of interested institutional investors and the number of shares indicated by each, as reflected in the book-running lead manager's book of potential institutional orders, and a report of aggregate demand from retail investors; and (2) after the settlement date of the new issue, a report of the final allocation of shares to institutional investors as reflected in the books and records of the book-running lead manager including the names of purchasers and the number of shares purchased by each, and aggregate sales to retail investors.

(2) Lock-Up Agreements

Proposed FINRA Rule 5131(d)(2) would require that any lock-up agreement or other restriction on the transfer of the issuer's shares by officers and directors of the issuer entered into in connection with a new issue must provide that such restrictions will apply to their issuer-directed shares. It also must provide that, at least two business days before the release or waiver of any lock-up or other restriction on the transfer of the issuer's shares, the book-running lead manager will notify the issuer of the impending release or waiver and announce the impending release or waiver through a major news service. The exceptions to this notification requirement are where the release or waiver is effected solely to permit a transfer of securities that is not for consideration and where the transferee has agreed in writing to be bound by the same lock-up agreement terms in place for the transferor.

FINRA also is proposing new Supplementary Material .03 to provide that the required announcement also may be made by another member or the issuer (although it remains the responsibility of the book-running lead manager to ensure that the impending release or waiver is properly announced in compliance with this Rule).

(3) Returned Shares

Proposed FINRA Rule 5131(d)(3) would require that the agreement between the book-running lead manager and other syndicate members must require, to the extent not inconsistent with SEC Regulation M, that any shares trading at a premium to the public offering price that are returned by a purchaser to a syndicate member after secondary market trading commences be used to offset the existing syndicate short position. If no syndicate short position exists, proposed FINRA Rule 5131(d)(3)(B) would require the member to either: (1) Offer returned shares at the public offering price to unfilled customers' orders pursuant to a random allocation methodology; or (2) sell returned shares on the secondary market and donate profits from the sale to an

[7] One commenter asked that hedge funds clearly be included in the proposal. *See* Regal. FINRA notes that hedge funds would be included where the beneficial interest of executive officers and directors of a particular company (and materially supported persons) in the aggregate exceed 25%. FINRA continues to believe that the 25% threshold is most appropriate and therefore will not increase the standard to 50% as requested by one commenter. *See* ABA.

[8] FINRA Rule 5130(i)(1) defines "beneficial interest" to mean any economic interest, such as the right to share in gains or losses. The receipt of a management or performance based fee for operating a collective investment account, or other fees for acting in a fiduciary capacity, shall not be considered a beneficial interest in the account.

"unaffiliated charitable organization" with the condition that the donation be treated as an anonymous donation to avoid any reputational benefit to the member. Proposed FINRA Rule 5131 would establish a new definition of "unaffiliated charitable organization" to prevent such charitable donations from benefiting the member or executive officers and directors of the member (and persons they materially support).[9] The definition of "unaffiliated charitable organization" is closely tied to specific information charities are required to file with the Internal Revenue Service.

(4) Market Orders

Proposed FINRA Rule 5131(d)(4) would require that no member may accept a market order for the purchase of shares of a new issue in the secondary market prior to the commencement of trading of such shares in the secondary market.

e. Definitions

Proposed FINRA Rule 5131(d) would provide the following definitions. The term "public company" would mean any company that is registered under Section 12 of the Exchange Act or files periodic reports pursuant to Section 15(d) thereof. The term "beneficial interest" would have the same meaning as defined in FINRA Rule 5130(i)(1). The term "covered security" would mean any non-public company satisfying the following criteria: (i) Income of at least $1 million in the last fiscal year or in two of the last three fiscal years and shareholders' equity of at least $15 million; (ii) shareholders' equity of at least $30 million and a two-year operating history; or (iii) total assets and total revenue of at least $75 million in the latest fiscal year or in two of the last three fiscal years. The term "flipped" would mean the initial sale of new issue shares purchased in an offering within 30 days following the offering date of such offering.

In addition, proposed FINRA Rule 5131(d) would define the term "investment banking services" to include, without limitation, acting as an underwriter, participating in a selling group in an offering for an issuer or otherwise acting in furtherance of a public offering of the issuer; acting as a financial adviser in a merger, acquisition or other corporate reorganization; providing venture capital, equity lines of credit, private investment, public equity transactions (PIPEs) or similar investments or otherwise acting in furtherance of a private offering of the issuer; or serving as placement agent for the issuer. Under the proposed rule, the term "material support" would mean directly or indirectly providing more than 25% of a person's income in the prior calendar year. Persons living in the same household are deemed to be providing each other with material support. The term "new issue" would have the same meaning as in Rule 5130(i)(9). In addition, the term "penalty bid" would mean an arrangement that permits the managing underwriter to reclaim a selling concession from a syndicate member in connection with an offering when the securities originally sold by the syndicate member are purchased in syndicate covering transactions. The term "unaffiliated charitable organization" would mean a tax-exempt entity organized under Section 501(c)(3) of the Internal Revenue Code that is not affiliated with the member and for which no executive officer or director of the member, or person materially supported by such executive officer or director, is an individual listed or required to be listed on Part VII of the Internal Revenue Service Form 990 (*i.e.,* officers, directors, trustees, key employees, highest compensated employees and certain independent contractors).

Supplementary Material

Proposed FINRA Rule 5131 would also include supplementary material regarding issuer directed allocations, in paragraph .01, which would provide that the prohibitions of paragraph (b) of the rule would not apply to securities that are directed in writing by the issuer, its affiliates, or selling shareholders, so long as the member has no involvement or influence, directly or indirectly, in the allocation decisions of the issuer, its affiliates, or selling shareholders with respect to such issuer-directed shares. Proposed FINRA Rule 5131 would also provide supplementary material regarding annual representation, in paragraph .02, which would provide that for purposes of paragraph (b) of the rule, a member may rely on a written representation obtained within the prior 12 months within the parameters set forth in paragraph .02. The proposed rule would also provide supplementary material regarding lock-up announcements, in paragraph .03, stating that the requirement that the book-running lead manager announce the impending release or waiver of a lock-up or other restriction on the transfer of the issuer's shares shall be deemed satisfied where such announcement is made by the book-running manager, another member or the issuer, so long as such announcement otherwise complies with the requirements of paragraph (d)(2) of Rule 5131.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org*, at the principal office of FINRA, and at the Commission's Public Reference Room.

III. Summary of Comments and Amendment No. 4

Prohibition on Spinning

Proposed FINRA Rule 5131(b) would prohibit the allocation of IPO shares to the account of an executive officer or director of a company (1) if the company is currently an investment banking services client of the member or the member has received compensation from the company for investment banking services in the past 12 months; (2) if the member intends to provide, or expects to be retained by the company for, investment banking services within the next 3 months; or (3) on the express or implied condition that such executive officer or director, on behalf of the company, will retain the member for the performance of future investment banking services.

Commenters generally supported the proposed changes to the spinning rule but requested additional modifications.[10] Commenters' concerns included that it would be difficult to identify the universe of officers and directors subject to the rule and asked that members be permitted to rely on annual negative consent letters.[11] One commenter expressed particular concern regarding the applicability of the rule to officers and directors of non-public companies.[12]

In response to commenters' concerns, FINRA is proposing several changes to the spinning provisions. First, FINRA proposes that members establish, maintain and enforce policies and procedures reasonably designed to ensure that investment banking personnel have no involvement or influence, directly or indirectly, in the new issue allocation decisions of the member. FINRA believes that such procedures are essential to managing conflicts of interest between investment

[9] Proposed FINRA Rule 5131(e)(9) defines ''unaffiliated charatable organization" as a tax-exempt entity organized under Section 501(c)(3) of the Internal Revenue Code that is not affiliated with the member and for which no executive officer or director of the member, or person materially supported by such executive officer or director, is an individual listed or required to be listed on Part VII of the Internal Revenue Service Form 990 (*i.e.*, officers, directors, trustees, key employees, highest compensated employees and certain independent contractors).

[10] *See* SIFMA.

[11] *See* ABA and SIFMA.

[12] *See* SIFMA.

banking and syndicate activities. FINRA understands that these procedures are customary at members today, and wants to ensure that such policies and procedures remain in force.

In addition, in response to comments, FINRA proposes to narrow the scope of the non-public companies covered by the spinning provision to focus the rule and firms' compliance efforts on those allocations that have the greatest potential for abuse. Specifically, the spinning provision would apply to any account in which an executive officer or director of a public company or a "covered non-public company," or a person materially supported by such executive officer or director, has a beneficial interest. The term "covered non-public company" means any non-public company satisfying the following criteria: (i) Income of at least $1 million in the last fiscal year or in two of the last three fiscal years and shareholders' equity of at least $15 million; (ii) shareholders' equity of at least $30 million and a two-year operating history; or (iii) total assets and total revenue of at least $75 million in the latest fiscal year or in two of the last three fiscal years.[13]

One commenter stated that it may be difficult to determine when the member "intends to provide" investment banking services and asked that the member be permitted to rely on policies and procedures reasonably designed to determine whether an entity is a current or prospective investment banking client, or whether the member intends to provide investment banking services to a prospective client, on the basis of reasonable criteria (which criteria may limit the identification of current clients to those relationships that are more than aspirational or passing, or for which the firm has a reasonable expectation of an active near-term relationship).[14] FINRA does not believe that the spinning provision should be recast solely as a "policies and procedures" rule. However, in response to commenters' concerns and in light of the provision explicitly requiring policies and procedures excluding investment banking personnel input into new issue allocation decisions, FINRA proposes to modify the three month forward looking provision to prohibit new issue allocations only where the person responsible for making the allocation decision "knows or has reason to know that the member intends to provide, or expects to be retained by the company for, investment banking services within the next 3 months." FINRA believes that this change strikes an appropriate balance in addressing the potential that new issue allocations will influence future business with the member while not unnecessarily impacting the capital formation process.[15] However, according to FINRA, if a member maintains effective information barriers between the investment banking and syndicate departments and the persons responsible for making new issue allocation decisions neither know nor have reason to know of the prospective business relationship, the forward-looking provision will not be violated.

To facilitate compliance with the spinning provisions as requested by commenters, proposed new Supplementary Material .02 expressly permits members to rely on written representations obtained within the prior 12 months from the beneficial owner(s) of the account (or a person authorized to represent the beneficial owner(s)) as to whether such beneficial owner(s) is an executive officer or director (or person materially supported by an executive officer or director) and if so, the company(ies) on whose behalf such executive officer or director serves. Consistent with current practice under FINRA Rule 5130, FINRA requires that the initial representation be an affirmative representation, but will permit such representation to be updated annually through the use of negative consent letters. Members are reminded that a member may not rely upon any representation it believes, or has reason to believe, is inaccurate. Finally, a member would be required to maintain a copy of all records and information relating to whether an account is eligible to receive an allocation of the new issue for at least three years following the member's allocation to that account.

FINRA notes that members should understand that the representation in the spinning context differs from that in FINRA Rule 5130 because, in the spinning case, the information obtained from the customer is not, by itself, sufficient to make a determination of whether a customer is eligible to purchase a new issue. Members also must determine whether each account considered for a new issue allocation involves an executive officer or director (or materially supported person) of a current or prospective client that falls within the scope of paragraph (b). Members may choose to adopt a more restrictive internal policy prohibiting allocations to all executive officers, directors and materially supported persons; however, FINRA notes that this is not required under the proposed rule change.[16]

Commenters also asked that the definition of "account of an executive officer or director" be amended to apply to accounts in which an executive officer, director or materially supported person has a "beneficial interest" rather than a "financial interest."[17] Commenters asked that the rule exclude accounts over which executive officers, directors or materially supported persons have "discretion or control" as this may unduly impact allocations to certain funds.[18] Commenters further argued that the definition of "account of an executive officer or director" should be modified to exclude certain other entities (such as foreign investment companies) consistent with FINRA Rule 5130(c).[19]

In response to comments, FINRA proposes to delete the definition of "account of an executive officer or director" and to instead include a new limitation in the spinning rule providing that the spinning prohibitions would not apply to allocations made to any account described in FINRA Rule 5130(c)(1) through (3) and (5) through

[13] These criteria are based on quantitative initial listing standards for a national securities exchange, which FINRA believes is a suitable proxy for the types of companies that are likely to be targeted by members for investment banking services. In this case, FINRA has determined that the applicable standards should be no less than those required for initial listing on the NASDAQ Global Market. FINRA further believes that, in modifying the scope of companies covered by the spinning provisions, it is unnecessary to create a *de minimis* standard for investment banking services compensation as urged by ABA. Moreover, FINRA believe that a *de minimis* standard would pose additional compliance burdens and would be susceptible to abuse by those seeking to avoid application of the proposed rule.

[14] *See* SIFMA.

[15] If an executive officer or director receives an allocation and the investment bank subsequently is retained for the performance of investment banking services within the three month window by such executive officer or director's employing firm, FINRA will investigate the particular information about the business relationship that was known (and by whom) at the time of the allocation, including a review of the communications between the broker-dealer and the investment banking client, and between the investment banking and syndicate departments, as well as the member's systems for logging and managing prospective and current client and transaction information.

[16] FINRA notes that the Voluntary Initiative more broadly prohibited allocations to the account of any executive officer or director of a U.S. public company or a public company for which a U.S. market is the principal equity trading market with respect to all hot IPOs. Voluntary Initiative Regarding Allocations of Securities in "Hot" Initial Public Offerings to Corporate Executives and Directors, *http://www.sec.gov/news/press/globalvolinit.htm* (Apr. 28, 2003).

[17] *See* ABA. Commenters generally favored the use of defined terms in proposed FINRA Rule 5131 that are consistent with the terms used in Rule 5130. *See* ABA and Regal.

[18] *See* ABA.

[19] *See* ABA.

(10), or to any other account in which the beneficial interests of executive officers and directors of the company and persons materially supported by such executive officers and directors in the aggregate do not exceed 25% of such account.[20] As requested by commenters, FINRA also proposes to add a new definition of "beneficial interest," which will have the same meaning as FINRA Rule 5130.[21] FINRA believes deleting the term "account of an executive officer or director" and modifying the scope of the rule to generally exclude those accounts excepted from FINRA Rule 5130(c) is appropriate in that allocations to such accounts are not likely to result in the type of abuse the spinning prohibition is geared toward. FINRA believes that the proposal, as amended, continues to meet the goals of the rule while avoiding an unnecessary impact on capital formation. In addition, by replacing references to "financial interest" with "beneficial interest" and deleting the reference to accounts in which officers and directors exercise "discretion or control," FINRA believes that the rule more properly focuses on accounts in which relevant parties have an economic interest.

Commenters argued that the spinning rule should apply only to "hot IPOs" and should exclude the types of offerings excepted under FINRA Rule 5130(i)(9).[22] FINRA does not agree that the rule should apply only to "hot IPOs." FINRA believes that the proposed rule change should not be limited to hot IPOs for the same reasons that FINRA Rule 5130 is not limited to hot IPOs.[23] Specifically, the operation of a rule based on an unknown future event—the opening price—creates compliance difficulties and potentially may exacerbate spinning problems and may harm capital formation by necessitating members to cancel allocations and reallocate shares to another customer. FINRA does, however, agree that certain types of offerings that are not likely to trade at a premium in the aftermarket should be excluded from the rule. Therefore, FINRA proposes to replace the defined term "initial public offering" or "IPO" with the term "new issue" throughout the proposed rule and to use the same definition provided in FINRA Rule 5130(i)(9). In developing the definition of "new issue" in FINRA Rule 5130, FINRA carefully considered the extent to which such offerings may be hot issues. Thus, the proposed rule, as amended, applies to "new issues," meaning "any initial public offering of an equity security as defined in Section 3(a)(11) of the Act, made pursuant to a registration statement or offering circular."

IPO Pricing and Trading Practices

Commenters generally supported the amended proposal related to IPO Pricing and Trading Practices.[24] However, one commenter asked that FINRA include clarifying language that the lock-up provision would only apply to lock-ups entered into in connection with the IPO, and not with respect to other lock-up agreements.[25] FINRA confirms that this provision applies only to lock-up agreements entered into in connection with a new issue and has modified the rule text to reflect this.[26] This commenter also asked that FINRA clarify that the required notice of an impending release or waiver of a lock-up may be announced either by the issuer or the applicable member(s).[27] FINRA agrees that, so long as the announcement is made through a major news service at least two days before the release or waiver of any lock-up or other restriction on the transfer of the issuer's shares, the requirement is satisfied irrespective of whether such announcement is made by the book-running lead manager, another member or by the issuer. Thus, FINRA is proposing new Supplementary Material .03 in response to comments to provide that the required announcement also may be made by another member or the issuer. However, FINRA notes that it remains the responsibility of the book-running lead manager to ensure that the impending release or waiver is properly announced in compliance with this Rule.

One commenter argued that the rule should be changed to permit the syndicate to retain discretion to either use returned shares to reduce the syndicate position or toward unfilled customer orders.[28] FINRA does not agree that this change is appropriate. FINRA expects that when shares trade at a premium to the public offering price, the incidence of returned shares should be minimal so as not to affect the ability of syndicate members to stabilize the market for such shares to the extent stabilization activities are even necessary. Further, FINRA believes that the complexity of addressing this alternative would unnecessarily complicate the proposed rule change.[29] However, in response to comments, FINRA is amending the rule to provide members with additional flexibility in the handling of returned shares. The amended proposal continues to require that, to the extent not inconsistent with SEC Regulation M, the agreement between the book-running lead manager and other syndicate members must require that any shares trading at a premium to the public offering price returned by a purchaser to a syndicate member after secondary market trading commences be used to offset the existing syndicate short position.[30] However, where no syndicate short position exists, the proposed rule

[20] One commenter asked that hedge funds clearly be included in the proposal. *See* Regal. FINRA notes that hedge funds would be included where the beneficial interest of executive officers and directors of a particular company (and materially supported persons) in the aggregate exceed 25%. FINRA continues to believe that the 25% threshold is most appropriate and therefore will not increase the standard to 50% as requested by one commenter. *See* ABA.

[21] FINRA Rule 5130(i)(1) defines "beneficial interest" to mean any economic interest, such as the right to share in gains or losses. FINRA notes that the receipt of a management or performance based fee for operating a collective investment account, or other fees for acting in a fiduciary capacity, shall not be considered a beneficial interest in the account.

[22] *See* ABA.

[23] While earlier proposed versions of the IPO Rule would have applied only to "hot issues," FINRA, then NASD, revised the proposal to cover the purchase and sale of all initial equity public offerings, not just those that open above a designated premium, because FINRA believed the revised approach would be easier to understand and would avoid many of the complexities associated with the cancellation provision. *See* Securities Exchange Act Release No. 48701 (October 24, 2003), 68 FR 62126 (October 31, 2003) (Order Approving File No. SR–NASD–99–60). (Proposed rule change relating to restrictions on the purchases and sales of initial public offerings of equity securities).

[24] *See* SIFMA.

[25] *See* SIFMA.

[26] Proposed Rule 5131(d)(2), as amended, provides that "[a]ny lock-up agreement or other restriction on the transfer of the issuer's shares by officers and directors of the issuer *entered into in connection with a new issue* shall provide that * * *" (new language emphasized).

[27] *See* SIFMA.

[28] *See* SIFMA.

[29] SIFMA also asked FINRA to clarify that anonymous, ordinary course sales on a national securities exchange or ATS at market prices will be considered a "random allocation" for the purposes of the rule. FINRA disagrees. The provision, as previously proposed would have required that, where no syndicate short position exists, the member must offer the returned shares to unfilled customer orders at the public offering price, not the market price. Moreover, FINRA notes that, if the shares are trading at a premium to the public offering price, then sales by the member at market prices would result in the premium inuring to the benefit of the member, which is inconsistent with the purpose of the provision and a member's obligations under FINRA Rule 5130.

[30] One commenter asked for confirmation that the appropriate time for determining whether returned shares are trading at a premium to their IPO price is at the time such securities are returned. FINRA agrees. *See* SIFMA. Another commenter argued that the requirement that members use a random allocation methodology to reallocate returned shares was inadequate. *See* Regal. FINRA disagrees and notes that this standard is already used successfully in other FINRA rules. *See* FINRA Rule 2360 (Allocation of Exercise Assignment Notices).

change would provide the member with the option, provided that it is in accordance with SEC Regulation M, to either: (1) Offer returned shares at the public offering price to unfilled customers' orders pursuant to a random allocation methodology or (2) sell returned shares on the secondary market and donate profits from the sale to an "unaffiliated charitable organization" with the condition that the donation be treated as an anonymous donation to avoid any reputational benefit to the member.[31] Proposed FINRA Rule 5131 establishes a new definition of "unaffiliated charitable organization" to prevent such charitable donations from benefiting the member or executive officers and directors of the member (and persons they materially support). FINRA believes that charitable donations funded by returned shares should not provide any reputational benefit to the member. The definition of "unaffiliated charitable organization" is closely tied to specific information charities are required to file with the Internal Revenue Service.

The proposed rule change, as amended, prohibits the acceptance of market orders for the purchase of IPO shares prior to the commencement of trading on the secondary market. A commenter supported the proposed amendment but offered alternative rule text.[32] FINRA favors its existing rule text but proposes a slight modification in response to comments to further clarify the provision such that the relevant text will now state that "no member may accept a market order for the purchase of shares of a new issue in the secondary market prior to the commencement of trading of such shares in the secondary market."

Other Issues

Commenters reiterated certain concerns regarding FINRA's proposed provision relating to abusive allocation arrangements. Proposed FINRA Rule 5131(a) prohibits a member from offering or threatening to withhold shares it allocates in an IPO as consideration or inducement for the receipt of compensation that is excessive in relation to the services provided by the member (*i.e., quid pro quo* allocations). Commenters generally supported this proposed provision but reiterated earlier concerns that the term "excessive" is subject to uncertainty.[33] One commenter requested that FINRA clarify that any services provided for a "fair price" as provided by FINRA's Corporate Financing Rule (Rule 5110(a)(9)) would not be deemed excessive.[34] This commenter also requested guidance that any services provided by a member paid for using "soft dollars" in conformity with Section 28(e) of the Act also would not be deemed excessive.[35] Another commenter asked that clarifying language be added to the rule to provide that an assessment of whether compensation is excessive would be based on the relevant facts and circumstances including, where applicable, the level of risk and effort involved in the transaction and the rates generally charged for such services.[36]

As stated in Amendment No. 3, FINRA agrees that an assessment of whether or not compensation is excessive would be based upon all of the relevant facts and circumstances including, where applicable, the level of risk and effort involved in the transaction and the rates generally charged for such services.[37] However, FINRA continues to believe that the proposed language, which refers to "compensation that is excessive in relation to the services provided," is most appropriate in that it affords FINRA the necessary flexibility in addressing the range of potential *quid pro quo* arrangements that may arise. As stated in Amendment No. 3, FINRA does not believe it is necessary to include rule text stating that an assessment of whether compensation is "excessive" will be based upon all of the relevant facts and circumstances.[38] Likewise, FINRA does not believe it is appropriate to provide blanket guidance regarding payments made in conformity with Section 28(e) of the Act or FINRA Rule 5110(a)(9).

Finally, one commenter raised concerns regarding FINRA's proposed flipping provision.[39] This commenter argued that, instead of defining the flipping period to mean the initial sale of new issue shares within 30 days following the offering date, the flipping provision should be based on the sale of shares prior to the book manager lifting the penalty bid, making the time period under the rule subject to the discretion of the managing underwriter.[40] FINRA does not agree that the suggested alternative represents an improvement to the proposed provision. FINRA believes that the certainty and finality of the proposed approach, including the 30-day window, is the appropriate duration for prohibiting members from recouping commissions from associated persons whose customers sell in cases where a penalty bid has not been assessed on the entire syndicate.

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be no less than 90 and no more than 180 days following publication of the *Regulatory Notice* announcing Commission approval.

IV. Discussion and Commission Findings

After carefully considering the proposal, the comments submitted, and FINRA's response to the comments, the Commission finds that the proposed rule change, as modified by Amendment Nos. 1 through 4, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[41] In particular, the Commission finds that the proposed rule change, as amended, is consistent with Section 15A(b)(6) of the Act,[42] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. In particular, the Commission believes that the proposed rule change is a reasonable step to enhance members' avoidance of unacceptable conduct when they engage in the allocation and distribution of new issue shares. The Commission also believes that the proposed rule change is a reasonable step to enhance public confidence in the distribution of new issues.

In addition, the Commission sought specific comment in Amendment No. 3 on whether there are any alternatives to the proposed rule change that FINRA should consider, such as whether proposed Rule 5131(b)'s spinning provisions should be modified to

[31] Proposed FINRA Rule 5131(e)(9) defines "unaffiliated charitable organization" as a tax-exempt entity organized under Section 501(c)(3) of the Internal Revenue Code that is not affiliated with the member and for which no executive officer or director of the member, or person materially supported by such executive officer or director, is an individual listed or required to be listed on Part VII of Internal Revenue Service Form 990 (*i.e.*, officers, directors, trustees, key employees, highest compensated employees and certain independent contractors).

[32] *See* SIFMA.

[33] *See* ABA and SIFMA.

[34] *See* ABA.

[35] *See* ABA.

[36] *See* SIFMA.

[37] *See* Amendment No. 3.

[38] *See* Amendment No. 3.

[39] *See* Regal.

[40] *See* Regal.

[41] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[42] 15 U.S.C. 78o–3(b)(6).

include a mandatory ban prohibiting members from seeking or providing investment banking services to a company for a period of 12 months following any allocation of IPO shares to an account of an executive officer or director of such company and whether such a ban would facilitate compliance. One commenter strongly supported a 12-month prohibition.[43] However, another commenter opposed such a prohibition, saying that it "would—by rule—impose an automatic sanction for even inadvertent allocations of IPO securities" and "would, in all cases, be financially disproportionate to the value of the securities involved in any violation, would not take into account the specific facts of each situation, deprive the FINRA member of its statutory right to a fair hearing before the imposition of any disciplinary sanction, and would unfairly deprive the company of the right to select the services of the FINRA member."[44] According to this commenter, in each case, the imposition of a mandatory ban, as suggested by the Commission, would be an excessive penalty in light of the facts and circumstances underlying the potential violation of the proposed rule.[45] Nevertheless, this commenter noted that the 12-month prohibition "should not in any event be approved without an opportunity for review of and comment on the text of the proposed rule," with commenter requesting that the Commission republish for comment any proposal to adopt such a mandatory ban on investment banking services with a sixty-day comment period. In light of these comments, the Commission will continue to consider the commenters' recommendations and concerns in considering whether any future action is warranted. However, the Commission does not believe this issue should preclude approval of the proposal.

V. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[46] for approving the proposed rule change, as modified by Amendment Nos. 1 through 4 thereto, prior to the 30th day after the date or publication of Amendment No. 4 in the **Federal Register**. The changes proposed in Amendment No. 4 respond to specific concerns raised. Moreover, accelerating approval of this proposal should benefit FINRA members by aiding them in avoiding misconduct in new issue distributions and should benefit investors by taking a step to enhance investor protection in the capital raising process.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No. 4, 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–NASD–2003–140 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–NASD–2003–140. 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 such filing also will be available for inspection and copying at the principal office of FINRA. 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–NASD–2003–140 and should be submitted on or before October 26, 2010.

VII. Conclusion

It is therefore ordered pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NASD–2003–140), as modified by Amendment Nos. 1 through 4, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[47]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–24899 Filed 10–4–10; 8:45 am]

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[43] *See* Regal.

[44] *See* ABA.

[45] *See id.*

[46] 15 U.S.C. 78s(b)(2).

[47] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63004; File No. SR–Phlx-2010–126]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Individual Stock Trading Pauses

September 29, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 22, 2010, NASDAQ OMX PHLX LLC ("PHLX" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend PHLX Rule 3100(a)(4) to add securities included in the Russell 1000® Index ("Russell 1000") and specified Exchange Traded Products ("ETP") to the definition of Circuit Breaker Securities. The text of the proposed rule change is available from the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com,* at the Exchange's principal office, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below, and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 3100(a)(4) to add securities included in the Russell 1000® Index ("Russell 1000") and specified Exchange Traded Products ("ETPs") to the definition of Circuit Breaker Securities. For purposes of this filing, ETPs include Exchange Traded Funds ("ETFs"),[3] Exchange Traded Vehicles ("ETVs"),[4] and Exchange Traded Notes ("ETNs").[5]

The primary listing markets for U.S. stocks recently amended their rules so that they may, from time to time, issue a trading pause for an individual security if the price of such security moves 10% or more from a sale in a preceding five-minute period.[6] In connection with its resumption of trading of NMS Stocks through the NASDAQ OMX PSX ("PSX") system, the Exchange recently adopted Rule 3100(a)(4)[7] to pause trading in an individual stock when the primary listing market for such stock issues a trading pause in any Circuit Breaker Securities, as defined in the rule. The rule is in effect on a pilot basis until December 10, 2010. Originally, the pilot list of Circuit Breaker Securities comprised all securities included in the S&P 500® Index ("S&P 500"). On September 10, 2010, the Commission approved filings by exchanges other than the Exchange to expand the list of Circuit Breaker Securities.[8] Accordingly, the Exchange is submitting this filing to conform its pilot list to the list just approved for other exchanges. Specifically, the Exchange proposes to add the securities included in the Russell 1000 and specified ETPs to the pilot. The pilot list of ETPs is provided in Exhibit 3. The Exchange believes that adding these securities would begin to address concerns raised by some parties that the scope of the original pilot may be too narrow, while at the same time recognizing that during the pilot period, the markets will continue to review whether and when to add additional securities to the pilot and whether the parameters of the rule should be adjusted for different securities.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[9] in general, and with Sections 6(b)(5) of the Act,[10] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change is also designed to support the principles of Section 11A(a)(1)[11] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes uniformity across markets concerning decisions to pause trading in a security when there are significant price movements.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[14] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay as it has recently received approval to initiate trading on PSX and plans to do so on October 8, 2010. In order to ensure that the Exchange's rules on individual stock trading pauses are consistent with the recently approved changes to the rules of other markets, the Exchange wants to be able to implement these pauses concurrent with the initiation of trading on PSX. For this reason, the Commission believes that waiving the

[3] An ETF is an open-ended registered investment company under the Investment Company Act of 1940 that has received certain exemptive relief from the Commission to allow secondary market trading in the ETF shares. ETFs are generally index-based products, in that each ETF holds a portfolio of securities that is intended to provide investment results that, before fees and expenses, generally correspond to the price and yield performance of the underlying benchmark index.

[4] An ETV tracks the underlying performance of an asset or index, allowing investor's exposure to underlying assets such as futures contracts, commodities, and currency without actually trading futures or taking physical delivery of the underlying asset. An ETV is traded intraday like an ETF. An ETV is an open-ended trust or partnership unit that is registered under the Securities Act of 1933.

[5] An ETN is a senior unsecured debt obligation designed to track the total return of an underlying index, benchmark or strategy, minus investor fees. ETNs are registered under the Securities Act of 1933 and are redeemable to the issuer.

[6] Securities Exchange Act Release No. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (SR–BATS–2010–014; SR–EDGA–2010–01; SR–EDGX–2010–01; SR–BX–2010–037; SR–ISE–2010–48; SR–NYSE–2010–39; SR–NYSEAmex–2010–46; SR–NYSEArca–2010–41; SR–NASDAQ–2010–061; SR–CHX–2010–10; SR–NSX–2010–05; SR–CBOE–2010–047).

[7] Securities Exchange Act Release No. 62877 (September 9, 2010), 75 FR 56633 (September 16, 2010) (SR–PHLX–2010–79).

[8] Securities Exchange Act Release No. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (SR–BATS–2010–018; SR–BX–2010–044; SR–CBOE–2010–065; SR–CHX–2010–14; SR–EDGA–2010–05; SR–EDGX–2010–05; SR–ISE–2010–66; SR–NASDAQ–2010–079; SR–NYSE–2010–49; SR–NYSEAmex–2010–63; SR–NYSEArca–2010–61; SR–NSX–2010–08).

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78k–1(a)(1).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[14] 17 CFR 240.19b–4(f)(6).

30-day operative delay [15] is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposal operative upon filing.

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–Phlx–2010–126 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2010–126. 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 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2010–126 and should be submitted on or before October 26, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–24896 Filed 10–4–10; 8:45 am]

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[15] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63000; File No. SR–CBOE–2010–089]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify the Fee Schedule for the CBOE Stock Exchange

September 28, 2010.

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 September 22, 2010, the Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the Fees Schedule for its CBOE Stock Exchange ("CBSX"). The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's principal office, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 23, 2010, the Commission published an immediately effective rule filing to modify the transaction fees for 24 securities currently traded on CBSX (the following symbols: BAC, C, DXD, EMC, EWJ, F, FAX, FAZ, GE, INTC, MOT, MSFT, MU, NOK, Q, QID, S, SIRI, SKF, T, TWM, UNG, UWM, XLF).[3] On September 9, 2010, the Commission published an immediately effective rule filing to modify the transaction fees for 51 more securities currently traded on CBSX (the following symbols: AA, AMAT, AMD, BGZ, BP, BSX, CMCSA, COCO, CSCO, CX, DELL, DUK, EBAY, EEM, EWT, FAS, FLEX, HBAN, IYR, MDT, MGM, IYR, MDT, MGM, NLY, NVDA, NWSA, ORCL, PFE, QCOM, QQQQ, SBUX, SH, SLV, SMH, SSO, SYMC, TBT, TSM, TXN, UCO, USO, VALE, VWO, WFC, XHB, XLB, XLK, XLP, XLU, XLV, XLY, XRX, YHOO).[4] The Exchange now proposes to add 50 more securities to that list of securities (the following symbols: ARNA, ATML, BKC, BRCD, CIM, DOW, DRYS, EFA, EWZ, FITB, FXI, GBG, GDX, GLD, GLW, HPQ, IDIX, IWM, JPM, KEY, LVLT, LVS, MFE, MO, MRVL, ONNN, PBR, PCBC, QLD, RF, RFMD, RIMM, RRI, RSCR, SDS, SNDK, SPLS, SPY, TEVA, TLT, TNA, TZA, UYG, VXX, VZ, X, XLE, XLI, XOM, XRT).

For those securities already approved for the new transaction fees as well as those that would be added by this proposed rule change, assuming their prices do not drop below $1, the takers of liquidity will receive a $0.0014 per share rebate, and makers of liquidity

[3] *See* Securities Exchange Act Release No. 34–62758 (August 23, 2010), 75 FR 166 (August 27, 2010) (SR–CBOE–2010–075).

[4] *See* Securities Exchange Act Release No. 34–62878 (September 9, 2010), 75 FR 179 (September 16, 2010) (SR–CBOE–2010–079).

will incur a $0.0018 charge. The new pricing strategy is designed to incent order routing behavior that selects CBSX as the first destination. By offering customers a significant rebate to "remove" liquidity, the Exchange will offer overall economic benefits far above those received at other markets.

The proposed rule change also moves the list of securities subject to these rates from the chart of rates into footnotes, as the expanded list had made the chart cumbersome. The changes will take effect on October 1, 2010.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 ("Act"),[5] in general, and furthers the objectives of Section 6(b)(4)[6] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE 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 solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is designated by the Exchange as establishing or changing a due, fee, or other charge, thereby qualifying for effectiveness on filing pursuant to Section 19(b)(3)(A)(ii)[7] of the Act and subparagraph (f)(2) of Rule 19b–4[8] thereunder.

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.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

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–CBOE–2010–089 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–CBOE–2010–089. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. 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–CBOE–2010–089 and should be submitted on or before October 26, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–24894 Filed 10–4–10; 8:45 am]

BILLING CODE 8010–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law (Pub. L.) 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, e-mail, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer to the following addresses or fax numbers.

(OMB), Office of Management and Budget, *Attn:* Desk Officer for SSA, *Fax:* 202–395–6974, *E-mail address: OIRA_Submission@omb.eop.gov.*

(SSA), Social Security Administration, DCBFM, *Attn:* Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, *Fax:* 410–965–6400, *E-mail address: OPLM.RCO@ssa.gov.*

SSA has submitted the information collections listed below to OMB for clearance. Your comments on the information collections would be most useful if OMB and SSA receive them within 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than November 4, 2010. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer at 410–965–8783 or by writing to the above e-mail address.

1. Request for Corrections of Earnings Record—20 CFR 404.820 and 20 CFR 422.125—0960–0029. Individuals alleging inaccurate earnings records that SSA maintains for them use Form SSA–7008 to provide the information SSA

[9] 17 CFR 200.30–3(a)(12).

needs to check earnings posted, and as necessary, initiate development to resolve any inaccuracies. The respondents are individuals who request correction of earnings posted to their Social Security earnings record.

Note: This is a correction notice: SSA published this information collection as an extension on August 2, 2010 at 75 FR 45190. Since we are revising the Privacy Act Statement, this collection is actually a revision of an OMB-approved information collection. The updated notice below reflects this status.

Type of Request: Revision of an OMB-approved information collection.

Method of collection	Number of respondents	Frequency of response	Estimated burden per response (minutes)	Estimated annual burden (hours)
Paper form	37,500	1	10	6,250
In-person or telephone interview	337,500	1	10	56,250
Total	375,000			62,500

2. Missing and Discrepant Wage Reports Letter and Questionnaire—26 CFR 31.6051–2—0960–0432. Each year employers report the wage amounts they paid their employees to the Internal Revenue Service (IRS) for tax purposes, and separately to SSA for retirement and disability coverage purposes. These reported amounts should equal each other. However, each year some employer wage reports SSA receives are less than the wage amounts employers report to the IRS. SSA uses Forms SSA–L93–SM, SSA–L94–SM, SSA–95–SM, and SSA–97–SM to ensure employees receive full credit for their wages. Respondents are employers who reported lower wage amounts to SSA than they reported to the IRS.

Type of Request: Revision of an OMB approved information collection.

Number of Respondents: 360,000.

Frequency of Response: 1.

Average Burden per Response: 30 minutes.

Estimated Annual Burden: 180,000.

3. Appointment of Representative—20 CFR 404.1707, 404.1720, 404.1725, 410.684 and 416.1507—0960–0527. Persons claiming rights or benefits under the Social Security Act must notify SSA in writing when they appoint an individual to represent them in dealing with SSA. SSA collects the information on Form SSA–1696–U4 to verify the appointment of such representatives. The SSA–1696–U4 allows SSA to inform representatives of items that affect the recipient's claim and allows claimants to give permission to their appointed representatives to designate a person to copy claims files. Respondents are applicants or recipients of Social Security benefits or SSI payments who are notifying SSA they have appointed a person to represent them in their dealings with SSA.

Type of Request: Revision of an approved-OMB information collection.

Number of Respondents: 551,520.

Frequency of Response: 1.

Average Burden per Response: 10 minutes.

Estimated Annual Burden: 91,920 hours.

Dated: *September 29, 2010.*

Faye Lipsky,

Reports Clearance Officer, Center for Reports Clearance, Social Security Administration.

[FR Doc. 2010–24841 Filed 10–4–10; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 7192]

30-Day Notice of Proposed Information Collection: DS 4079, Request for Determination of Possible Loss of United States Citizenship, (No. 1405–0178)

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Request for Determination of Possible Loss of United States Citizenship.
- *OMB Control Number:* No. 1405–0178.
- *Type of Request:* Revision.
- *Originating Office:* Bureau of Consular Affairs, Overseas Citizens Services (CA/OCS).
- *Form Number:* DS–4079.
- *Respondents:* United States Citizens.
- *Estimated Number of Respondents:* 1,132.
- *Estimated Number of Responses:* 1,132.
- *Average Hours Per Response:* 15 minutes.
- *Total Estimated Burden:* 283 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Required to obtain or retain benefits.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from October 5, 2010.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *E-mail: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. *Attention:* Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the proposed information collection and supporting documents from Derek A. Rivers, Bureau of Consular Affairs, Overseas Citizens Services (CA/OCS/PRI), U.S. Department of State, SA–29, 4th Floor, Washington, DC 20520, who may be reached on (202) 647–3117 or *ASKPRI@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary to properly perform our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond,

Abstract of proposed collection: The purpose of the DS–4079 questionnaire is to determine current citizenship status and the possibility of loss of United States citizenship. The information provided assists consular officers and the Department of State in determining

if the U.S. citizen has lost his or her nationality by voluntarily performing an expatriating act with the intention of relinquishing United States nationality.

Methodology: The information is collected in person, by fax, or via mail. The Bureau of Consular Affairs is currently exploring options to make this information collection available electronically.

Dated: September 2, 2010.

James Pettit,

Managing Director, Overseas Citizens Services, Department of State.

[FR Doc. 2010–24992 Filed 10–4–10; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Informational Filing

In accordance with Section 236.913 of Title 49 of the Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received an informational filing from the Northeast Illinois Regional Commuter Railroad Corporation (Metra) to permit phased revenue testing of the railroad's processor-based train control system. The informational filing is described below, including the requisite docket number where the informational filing and any related information may be found. The document is also available for public inspection.

Northeast Illinois Regional Commuter Railroad Corporation

[Docket Number FRA–2008–0057]

Metra has submitted an informational filing to FRA to permit phased revenue testing of the railroad's processor-based train control system identified as Electronic Train Management System (ETMS). The informational filing addresses the requirements under 49 CFR 236.913(j)(1).

Specifically, the informational filing contains a description of the ETMS product, an operational concepts document, and a test plan. A temporary waiver petition to support phased revenue testing of ETMS was submitted separately. The ETMS is a locomotive-centric, non-vital system designed to be overlaid on existing methods of operation and to provide an improved level of railroad safety through enforcement of a train's authority limits and both permanent and temporary speed restrictions.

Metra desires to commence phased revenue testing as soon as practicable, contingent upon FRA's acceptance and approval of their informational filing. Metra intends to test ETMS on its Joliet Sub-District between Chicago Terminal and Joliet, Illinois, and its Beverly Sub-District between Gresham Junction and Western Avenue Junction.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. All communications concerning these proceedings should identify the appropriate docket number (Docket Number FRA–2008–0057) and may be submitted by one of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after this period will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the DOT Docket Management Facility, 1200 New Jersey Avenue, SE., Room W12–140, in Washington DC. All documents in the public docket are also available for inspection and copying on the internet at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or at *http://dot.gov/privacy.html.*

Issued in Washington, DC on September 28, 2010.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2010–25013 Filed 10–4–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Government/Industry Air Traffic Management Advisory Committee (ATMAC)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Government/Industry Air Traffic Management Advisory Committee (ATMAC)

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Government/Industry Air Traffic Management Advisory Committee (ATMAC)

DATES: The meeting will be held October 28, 2010, from 9 a.m. to 11 a.m.

ADDRESSES: The meeting will be held at RTCA Headquarters, Colson Board Room, 1828 L Street, NW., Suite 805, Washington, DC 20036

METRO: Red Line—Farragut North Station (Use L Street Exit) Blue/Orange Line—Farragut West Station (Use 18th Street Exit).

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for the Air Traffic Management Advisory Committee meeting. The agenda will include:

- Opening Plenary (Welcome and Introductions).
- Consideration for approval of Interim Recommendations from the Trajectory Operations (Tops) Work Group providing guidance to SC–214 related to the development of standards for Air Traffic Control Data Communications.
- FAA response on remaining gaps identified by the ATMAC between the TF5 recommendations and the FAA's NextGen Implementation Plan.
- Closing Plenary (Adjourn).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons

wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 29, 2010.

Robert L. Bostiga,

RTCA Advisory Committee.

[FR Doc. 2010–24994 Filed 10–4–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No FTA–2010–0027]

National Transit Database: Amendments to the Urbanized Area Annual Reporting Manual and to the Safety and Security Reporting Manual

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of Proposed Amendments to the 2011 National Transit Database Urbanized Area Annual Reporting Manual and Announcement of Immediate Suspension of Collecting Security Data on the S&S–50 Form in the Safety and Security Module

SUMMARY: This notice provides interested parties with the opportunity to comment on changes to the Federal Transit Administration's (FTA) National Transit Database (NTD) reporting requirements, including amendments to the 2011 Urbanized Area Annual Reporting Manual (Annual Manual). Pursuant to 49 U.S.C. 5335, FTA requires recipients or beneficiaries of FTA Urbanized Area Formula Grants to provide an annual report to the Secretary of Transportation via the NTD reporting system according to a uniform system of accounts (USOA). Other transit systems in urbanized areas report to the NTD under these requirements on a voluntary basis for purposes of including data from their NTD reports in the apportionment of Urbanized Area Formula Grants. In an ongoing effort to improve the NTD reporting system and be responsive to the needs of the transit systems reporting to the NTD, FTA annually refines and clarifies the reporting requirements through revisions to the Annual Manual. Additionally, FTA announces that it is immediately suspending data collection of personal security incidents on the S&S–50 Form in the Safety & Security Module.

DATES: Comments must be received on or before December 6, 2010. FTA will consider late filed comments to the extent practicable.

ADDRESSES: You may submit comments [identified by DOT Docket ID Number FTA–2010–0027] at the Federal eRulemaking Portal at: *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Fax: 202–493–2251.

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

Hand Delivery or Courier: West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

Instructions: When submitting comments, you must use docket number FTA–2010–0027. This will ensure that your comment is placed in the correct docket. If you submit comments by mail, you should submit two copies and include the above docket number. Note that all comments received will be posted, without change, to *http://www.regulations.gov* including any personal identifying information.

FOR FURTHER INFORMATION CONTACT: John D. Giorgis, NTD Program Manager, Office of Budget and Policy, (202) 366–5430 (telephone); (202) 366–7989 (fax); or *john.giorgis@dot.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

I. Background

The National Transit Database (NTD) is the Federal Transit Administration's (FTA's) primary database for statistics on the transit industry. Congress established the NTD to "help meet the needs of * * * the public for information on which to base public transportation service planning * * *" (49 U.S.C. 5335). Currently, over 700 transit providers in urbanized areas report to the NTD through an Internet-based reporting system. Each year, performance data from these submissions are used to apportion over $6 billion of FTA funds under the Urbanized Area Formula (Section 5307) Grants and the Fixed Guideway Modernization Grants Programs. These data are made available on the NTD Web site at *http://www.ntdprogram.gov* for the benefit of the public, transit systems, and all levels of government. These data are also used in the annual National Transit Summaries and Trends report, the biennial Conditions and Performance Report to Congress, and in meeting FTA's obligations under the Government Performance and Results Act. Reporting requirements are governed by a *Uniform System of Accounts* (USOA) and an Annual Reporting Manual that is issued each year. Both the USOA and the Annual Manual are available for review on the NTD Website at *http://www.ntdprogram.gov.* Additionally, urbanized area transit systems also make monthly reports to the NTD on safety and security incidents through the NTD Safety & Security Module.

II. Proposed Changes in the 2011 Annual Manual

FTA proposes several substantive changes to the Annual Manual for the 2011 Report Year: (1) To clarify the eligibility of vanpools to be reported to the NTD; (2) to redefine several of the modes of transportation service; (3) to make some definitional clarifications; (4) to revise the reporting requirements for small transit systems; (5) to add financial balance sheet reporting; (6) to update the procedures for making urbanized area allocations; and (7) to establish special procedures for handling the release of new urbanized area definitions from the Census Bureau.

(1) Eligibility of Vanpools for the NTD

Currently, FTA requires vanpools to have a public sponsor in order to be included in the NTD. This does not capture vanpool service being provided as public transportation by the private sector. In other cases, the mere existence of a public sponsor for vanpool service has allowed some vanpools to be reported to the NTD without adequate assurances that the vanpool is in fact public transportation.

FTA proposes to change its requirements for reporting vanpool service to the NTD as follows: To be included in the NTD, a sponsor of vanpool service must demonstrate: (1) That it is open to the public and that any vans that are restricted *a priori* to particular employers and which do not participate in the ride-matching service of the vanpool are excluded from the NTD report; (2) that it actively engages in the following activities: advertising the vanpool service to the public, matching interested members of the public to vanpools with available seats, and reasonable planning to increase its service (when funding is available) to meet demand from additional riders; (3) that the service is open to individuals with disabilities, in accordance with the Americans with Disabilities Act of 1990; and (4) that it has a record-keeping system in place to collect and report fully-allocated operating costs for the service.

Reporting fully-allocated operating costs means that the vanpool can report on the total cost of the service, including: (1) Any fuel, insurance, and maintenance costs paid by vanpool participants; (2) all advertising and promotion costs; (3) costs paid by any third-parties to support the vanpool program; and (4) any contract administration costs borne by the vanpool sponsor.

Finally, NTD IDs for vanpool programs will be assigned on the basis of the entity that is sponsoring the vanpool, and is defining the eligibility requirements for participation in the vanpool. FTA will require all existing vanpool services in the NTD to recertify their approval to report to the NTD based on the new criteria for the 2011 Report Year.

(2) New Modes

Almost all data reported to the NTD is reported on the basis of modes of service, such as the commuter rail (CR) mode or the demand response (DR) mode. Mode of operation is a useful way of organizing transit data, as it easily facilitates the creation of National benchmarks and performance peer-groups for systems of similar characteristics. To facilitate this, and to recognize that modes have changed over time, FTA proposes creating four new modes of operation: Bus Rapid Transit (RB), Commuter Bus (CB), Streetcar Rail (SR), and Hybrid Rail (YR). These definitions, like all NTD modes, may not necessarily apply to other areas where definitions are established by law, rule, or regulation.

Bus Rapid Transit (RB): This mode will be for fixed-route bus systems that either (1) operate their entire routes predominantly on fixed-guideways (other than on highway HOV or shoulder lanes, such as for commuter bus service) or (2) that operate entire routes of high-frequency service with the following elements: substantial transit stations, traffic signal priority or pre-emption, low-floor vehicles or level-platform boarding, and separate branding of the service. High-frequency service is defined as 10-minute peak and 15-minute off-peak headways for at least 14 hours of service operations per day.

Commuter Bus (CB): This mode will be for fixed-route bus systems that are primarily connecting outlying areas with a central city through bus service that operates with at least five miles of continuous closed-door service. This service typically operates using motorcoaches, and usually features peak scheduling, multiple-trip tickets, and multiple stops in outlying areas with limited stops in the central city.

Streetcar Rail (SR): This mode is for rail transit systems operating entire routes predominantly on streets in mixed-traffic. This service typically operates with single-car trains powered by overhead catenaries and with frequent stops.

Hybrid Rail (YR): This mode is for rail transit systems primarily operating entire routes on the National system of railroads, but not operating with the characteristics of commuter rail. This service typically operates light rail-type vehicles as diesel multiple-unit trains (DMU's). These trains do not meet Federal Railroad Administration standards, and so must operate with temporal separation from freight rail traffic.

FTA expects that many systems reporting these new modes will make a transition of 100% of their service from the existing Motorbus (MB) or Light Rail (LR) modes to the new mode. For systems that will need to split their service between an existing mode and a new mode, FTA will grant waivers from this requirement for up to two years to accommodate the transition.

(3) Definition Clarifications

FTA proposes reclassifying "Aerial Tramway" to be reported as a "rail" mode of operation, as this will aid data presentation in allowing it to be included with other small rail modes, such as Inclined Plane.

FTA also proposes combining the Monorail (MO) and Automated Guideway (AG) modes into a single Monorail/Automated Guideway (MG) mode. Currently, the definition of the "Monorail" mode only applies to a single system in Seattle, Washington. Also, the Automated Guideway mode currently applies to systems that are often popularly thought of as being in the Monorail mode (e.g. the Las Vegas Monorail.) In practice, both of these modes have similar characteristics of exclusive guideway without using steel wheels on rails. Combining these modes will increase data clarity for our users.

FTA also proposes clarifying the definitions used to collect miles of rail right-of-way alignment on the Transit Way Mileage (A–20) Form. FTA collects at-grade rail alignments on this form according to three categories: (1) At-grade exclusive right-of-way; (2) at-grade with cross-traffic; and (3) at-grade with mixed and cross-traffic. Examination of past years' NTD reports has indicated that this data has been inconsistently reported in the past. FTA proposes the following clarifications:

At-Grade With Mixed and Cross Traffic: includes alignments where rail vehicles and rubber-tire vehicles travel in the same lanes, and alignments where pedestrians may freely cross the tracks at any point.

At-Grade With Cross Traffic: closed (i.e., non-mixed) rail alignments between any two contiguous crossings that are at-grade should be reported as *At-Grade With Cross Traffic.* For example, crossing another right-of-way by using a tunnel or an elevated structure would not constitute an at-grade crossing, and at-grade crossings located before and after the tunnel or elevated structure would not be contiguous. The same would be true for tunnels or elevated structures used by the other right-of-way. Similarly, closed rail alignments between a rail yard or maintenance facility and an at-grade crossing should also be reported as "at-grade with cross traffic." At-grade alignments between an at-grade crossing and an other-than-at-grade crossing with another right-of-way should be reported as *At-Grade Exclusive Right-of-Way (ROW).*

(4) Reporting Requirements for Small Systems

The NTD currently offers reduced reporting requirements to recipients or beneficiaries of Section 5307 grants that only operate 9 or fewer vehicles in maximum service throughout the year. Systems receiving this "*9 or Fewer Vehicles Waiver*" currently only need to report their contact information and their revenue vehicle inventory to the NTD each year. Systems receiving this waiver, however, do not report any data on service operations (e.g., vehicle revenue miles), nor on ridership, and thus data from these systems is not available for use in the apportionment of Section 5307 grants (including the Small Transit Intensive Cities (STIC) tier). As such, of the 144 transit systems eligible for this waiver in 2009, only 98 (68%) used the waiver. This is an even smaller percentage (14%) of the 705 systems reporting to the NTD in 2009.

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy to Users (SAFETEA–LU) of 2005 established new requirements for recipients or beneficiaries of Section 5311 grants (Other Than Urbanized Area (Rural) Formula Grants) to report to the NTD on their sources of revenues, vehicle revenue miles, and ridership, among other factors. This created two unusual circumstances. First, the NTD now collects and makes available to the public more data on rural transit systems than on small transit systems in urbanized areas. Second, in order to

meet statutory reporting requirements, a small transit system that receives funding from both the Section 5307 and Section 5311 Programs may receive a "*9 or Fewer Vehicles Waiver*" for urbanized area reporting, but then must also provide data to their State Department of Transportation (State DOT) for rural reporting. These overlapping reporting requirements have caused confusion both to transit systems required to report to the NTD and to data users. Thus, FTA proposes to align the requirements for transit systems receiving a "*9 or Fewer Vehicles Waiver*" with the reporting requirements for the Rural NTD Module. Transit systems receiving such a waiver will report directly to the NTD Annual Module (Urbanized Area Reporting) through reporting forms that closely mirror the RU–20 Form used for the Rural NTD. As such, State DOTs will not be required to complete an RU–20 on behalf of subrecipients that are already reporting directly to the urbanized area modules of the NTD, but will instead simply complete the RU–50 Subrecipient Identification Form for these subrecipients.

In order to offset the increased burden on the public, FTA proposes to expand this waiver to urbanized area transit systems operating 30 or Fewer Vehicles in Maximum Service, and which do not operate any service over fixed-guideways. This would expand eligibility for the new "*30 or Fewer Vehicles Waiver*" to over 180 additional transit systems, representing nearly half of the transit systems reporting to the NTD.

Thus, transit systems receiving this waiver would be required to continue to report information on their contact information, their service area, and their revenue vehicle inventory. Additionally, these systems would be required to report on their sources of operating funds applied and sources of capital funds applied (at the level of each individual FTA program, total state funds, total local funds, and other funds), volunteer resources, and taxi cab trips used. Furthermore, service data would be reported by these systems as an annual total of vehicle revenue miles, vehicle revenue hours, unlinked passenger trips, and sponsored demand response trips. Passenger miles, however, would not be collected—in order to exempt these systems from the burden of sampling. Data from these systems would be used in the apportionment of formula grants (including STIC) wherever possible, but would be excluded from those calculations in the apportionment that rely upon passenger mile data. Systems that wish for their passenger mile data to benefit their local urbanized area in the apportionment must not apply for this waiver and must instead file a full NTD report.

Additionally, to support the apportionments, systems receiving this waiver would still be required to complete the short Federal Funding Allocation (FFA–10) Form. Additionally, systems receiving this waiver would now also be required to report to the Safety & Security Module, as well as to the Monthly Module. The Monthly Module requires a monthly report within 30 days of unlinked passenger trips, vehicle revenue miles, vehicle revenue hours, and vehicles operated within maximum service for the month. The Safety & Security Module requires a detailed report within 30 days of any incident involving one or more fatalities, one or more injuries, total property damage in excess of $25,000, or an evacuation for life safety reasons. The Safety & Security Module also requires a summary monthly report of minor incidents such as fires requiring suppression, or single-person slips or falls resulting in injuries. Most systems receiving this waiver would be able to quickly submit their monthly report indicating that no reportable incidents occurred.

(5) Financial Balance Sheet Reporting

In its proposed amendments to the 2009 Reporting Manual, FTA provided notice of its intent to simplify its existing data collection on bonds and loans. The current forms have caused a great deal of confusion to transit systems reporting to the NTD. FTA proposed to simplify bond and loan reporting on a separate form. However, FTA has received comments that this proposal was inadequate because it focused solely on one category of liabilities—bonds and loans—and also because it provided an incomplete picture of a transit system's financial health by not collecting any information on financial assets. FTA believes that information on the financial health of transit systems is very useful in fulfilling the NTD's statutory purpose of providing "information on which to base public transportation service planning," so FTA is modifying its original proposal. As such, FTA proposes to add the reporting of an end-of-year balance sheet for transit systems reporting to the NTD. In order to reduce the burden to reporters, it proposes consolidating the asset and liability classes found in the *Uniform System of Accounts* (USOA) as follows, with the number of the corresponding USOA accounts in parentheses:

For liabilities, transit systems would report their end-of-year Long Term Debt (221), Estimated Liabilities-Long-Term Pension Liabilities (231.01), Estimated Liabilities-Other (231.02 and 231.03), and Other Liabilities (201–211 & 241).

For financial assets, transit systems would report their end-of-year Cash and Receivables (101 & 102), Investments (131), Special Funds (141), and Other Financial Assets (105, 151). The value of materials and supplies (103), capital assets (111 & 112), and intangible assets (121) would *not* be collected in order to minimize reporting. The full *Uniforms System of Accounts* can be found online at *http://www.ntdprogram.gov* under the link for "Reference Materials." FTA is proposing to implement these categories for the 2011 Report Year and wishes to give transit systems plenty of time to prepare for this change through training and webinars. Nevertheless, FTA will grant data waivers for the first year of reporting in cases where transit systems need additional time to meet these requirements. Additionally, this information will not be required for any transit system making use of the 30 or fewer vehicles waiver.

(6) Revision of Rules for Urbanized Area Allocations

The NTD recognizes three basic types of geographic areas: urbanized areas over 200,000 in population (large UZAs); urbanized areas under 200,000 in population (small UZAs); and non-urbanized areas (rural areas.) On the FFA–10 form, transit systems reporting to the NTD are required to allocate data on their operating statistics among each of the one or more large UZAs, each of the one or more small UZAs, and to rural areas (in aggregate) served by the transit system. The data to be allocated includes vehicle revenue miles (VRM), vehicle revenue hours (VRH), unlinked passenger trips (UPT), passenger miles traveled (PMT), and operating expenses, as well as fixed-guideway information (if applicable). Transit systems may make this allocation based on actual data (if the transit system ordinarily records actual data based on each of the geographic areas served), or the transit system may allocate its data on the basis of the ratio of vehicle revenue miles operated in each geographic area.

Currently, if a transit system operates transit service connecting one or more small UZAs or rural areas to a large UZA, the NTD allows the transit system to allocate all of that service to the large UZA on the FFA–10 form. This is based on the concept that this service is "serving" the large UZA. In the past, this policy was often beneficial to transit systems, as only large UZAs received an

apportionment of funds based on service data reported to the NTD. Thus, allocation of as much service data as possible to the large UZA resulted in the greatest potential benefits in the apportionment. Since the passage of the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA–LU), this calculation has changed. Now, small UZAs also receive an apportionment based on service data reported to the NTD under the Small Transit Intensive Cities (STIC) formula.

FTA proposes to change this policy as follows: Transit systems reporting to the NTD must allocate data on the FFA–10 to each urbanized areas served by the transit system, and to rural areas in aggregate (if rural areas are served by the transit system), based on a reasonable representation of the service provided to each area. Service that connects a small UZA or a rural area to a large UZA cannot be allocated entirely to the large UZA. An area is considered served by transit service if passengers can board or alight the transit service there. Thus, service that begins in a small UZA, operates on a closed-door basis through a rural area, and ends in a large UZA should only be allocated to the small UZA and the large UZA—as the rural area is not served by transit in this case. Transit systems should make this allocation based on actual data whenever possible, but may make this allocation based on VRM, UPT, or PMT, or some other reasonable and consistent method that reflects the service provided.

FTA proposes to change its policy for three reasons. First, FTA wishes to provide a more accurate representation of the distribution of transit service among various urbanized areas and rural areas to our data users. Secondly, the current policy does not properly allocate transit service data to small UZAs for use in calculating the apportionment of funds under the Small Transit Intensive Cities (STIC) Program. Finally, transit researchers and policymakers have expressed concern to FTA that the current policy understates the level of transit service in rural areas. The NTD was recently expanded to collect data from recipients of FTA's Other Than Urbanized Area Formula Grant (Section 5311) Program. The data set produced by this collection, however, produces an incomplete picture of transit service in rural areas in cases where the service is provided by a transit system that is also a recipient of Section 5307 Funds. Data produced by this new policy will provide for a complete picture of rural transit services.

(7) Special Procedures for New Urbanized Area Definitions From the 2010 Census

It is anticipated the Census Bureau will publish new urbanized area definitions based on the 2010 Decennial Census in Spring 2012. By the time these definitions are published, most urbanized area transit systems will have already submitted their 2011 Annual Module reports, and many will have already received their closeout letter for this year. This data, however, must be used for the FY 2013 apportionment of formula grants, which must be conducted using the most-recently-available urbanized area definitions from the Census Bureau. To accomplish this, FTA proposes the following procedures for the 2011 Report Year.

Transit systems reporting to the NTD will complete a B–10 Identification Form and an FFA–10 Form as usual and submit their report according to the usual timelines and procedures. Once the Census Bureau publishes the new Urbanized Area definitions and maps, and once FTA updates the NTD Online Reporting System (ORS) to incorporate these new definitions, FTA will notify all urbanized area NTD reporters to logon to the NTD ORS and submit a new form addenda which will ask each system to confirm which of the new UZAs it serves (as suggested by FTA), to allocate their service among the new UZA boundaries, and to sub-allocate their service by State for any UZA that includes portions of more than one State. Transit systems would not be required to resubmit their Chief Executive Officer Certification nor their Independent Auditor Statement for these report addenda. FTA also notes that in some rare cases, if the Census Bureau releases revisions or corrections to its UZA definitions that FTA may require some adjustments to the aforementioned report addenda, in order to reflect the most-recent UZA definitions. Again, this proposal is to support the FY 2013 apportionment of urbanized area formula grants.

III. Announcement of Suspension of Personal Security Reporting

Effective with the publication of this notice, FTA announces that it is temporarily suspending the reporting of personal security data on the S&S–50 Form of the Safety & Security Module. As part of its continuous evaluation of NTD reporting requirements and respondent reporting burden, FTA has determined that it would be prudent to suspend this data collection at this time, pending further review of its own data needs and the burden of this data collection on the public. FTA will seek public comment before taking action to lift this suspension, alter this data collection, or cancel this data collection permanently. Transit systems reporting to the NTD should continue to report "Other Safety Occurrences Not Otherwise Classified" (e.g. slip and fall/electric shock/other) on the S&S–50 Form and on the "Number of Occurrences of Fire." All other aspects of this Form are being suspended. Transit systems should also continue to report on the S&S–40: Reportable Incident Form any crime-related incident that meets the threshold criteria of one or more fatalities, one or more injuries, or an evacuation for life-safety reasons.

Issued in Washington, DC, this 24th day of September, 2010.

Peter Rogoff,

Administrator.

[FR Doc. 2010–24990 Filed 10–4–10; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2011–22842]

Notice of Opportunity To Participate, Criteria Requirements and Application Procedure for Participation in the Military Airport Program (MAP)

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

ACTION: Notice of criteria and application procedures for designation or redesignation, in the Military Airport Program (MAP), for the fiscal year 2011.

SUMMARY: In anticipation of Congress enacting a reauthorization of the Airport Improvement Program (AIP) the FAA is publishing this annual notice. This notice announces the criteria, application procedures, and schedule to be applied by the Secretary of Transportation in designating or redesignating, and funding capital development annually for up to 15 current (joint-use) or former military airports seeking designation or redesignation to participate in the MAP. While FAA currently has continuing authority to designate or redesignate airports, FAA does not have authority to issue grants for fiscal year 2011 MAP, and will not have authority until Congress enacts legislation enabling FAA to issue grants for fiscal year 2011.

The MAP allows the Secretary to designate current (joint-use) or former military airports to receive grants from the Airport Improvement Program (AIP).

The Secretary is authorized to designate an airport (other than an airport designated before August 24, 1994) only if:

(1) The airport is a former military installation closed or realigned under the Title 10 U.S.C. Sec. 2687 (announcement of closures of large Department of Defense installations after September 30, 1977), or under Section 201 or 2905 of the Defense Authorization Amendments and Base Closure and Realignment Acts; or

(2) The airport is a military installation with both military and civil aircraft operations.

The Secretary shall consider for designation only those current or former military airports, at least partly converted to civilian airports as part of the national air transportation system, that will reduce delays at airports with more than 20,000 hours of annual delays in commercial passenger aircraft takeoffs and landings, or will enhance airport and air traffic control system capacity in metropolitan areas, or reduce current and projected flight delays (49 U.S.C. 47118(c)).

DATES: Applications must be received on or before December 6, 2010.

ADDRESSES: Submit an original and two copies of *Standard Form (SF) 424*, "Application for Federal Assistance," prescribed by the Office of Management and Budget Circular A–102, available at *http://www.faa.gov/airports_airtraffic/airports/regional_guidance/northwest_mountain/airports_resources/forms/media/applications/application_sf_424.doc* along with any supporting and justifying documentation. Applicant should specifically request to be considered for designation or redesignation to participate in the fiscal year 2011 MAP. Submission should be sent to the Regional FAA Airports Division or Airports District Office that serves the airport. Applicants may find the proper office on the FAA Web site *http://www.faa.gov/airports_airtraffic/airports/regional_guidance/or may contact the office below.*

FOR FURTHER INFORMATION CONTACT: Mr. Kendall Ball (*Kendall.Ball@faa.gov*), Airports Financial Assistance Division (APP–500), Office of Airport Planning and Programming, Federal Aviation Administration (FAA), 800 Independence Avenue, SW., Washington, DC 20591, (202) 267–7436.

SUPPLEMENTARY INFORMATION:

General Description of the Program

The MAP provides capital development assistance to civil airport sponsors of designated current (joint-use) military airfields or former military airports that are included in the FAA's National Plan of Integrated Airport Systems (NPIAS). Airports designated to the MAP may obtain funds from a set-aside (currently four percent) of AIP discretionary funds for airport development, including certain projects not otherwise eligible for AIP assistance. These airports are also eligible to receive grants from other categories of AIP funding.

Number of Airports

A maximum of 15 airports per fiscal year (FY) may participate in the MAP. There are 8 slots available for designation or redesignation in FY 2011. There is 1 general aviation slot available fiscal year 2011.

Term of Designation

The maximum term is five fiscal years following designation. The FAA can designate airports for a period of less than five years. The FAA will evaluate the conversion needs of the airport in its capital development plan to determine the appropriate length of designation.

Redesignation

Previously designated airports may apply for redesignation of an additional term not to exceed five years. Those airports must meet current eligibility requirements in 49 U.S.C. 47118(a) at the beginning of each grant period and have MAP eligible projects. The FAA will evaluate applications for redesignation primarily in terms of warranted projects fundable only under the MAP as these candidates tend to have fewer conversion needs than new candidates. The FAA's goal is to graduate MAP airports to regular AIP participation by successfully converting these airports to civilian airport operations.

Eligible Projects

In addition to eligible AIP projects, MAP can fund fuel farms, utility systems, surface automobile parking lots, hangars, and air cargo terminals up to 50,000 square feet. A designated or redesignated military airport can receive not more than $7,000,000 each fiscal year to construct, improve, and repair terminal building facilities. In addition a designated or redesignated military airport can receive not more than $7,000,000 each fiscal year for MAP eligible projects that include hangars, cargo facilities, fuel farms, automobile surface parking, and utility work.

Designation Considerations

In making designations of new candidate airports, the Secretary of Transportation may only designate an airport (other than an airport so designated before August 24, 1994) if it meets the following general requirements:

(1) The airport is a former military installation closed or realigned under:

(A) Section 2687 of Title 10;

(B) Section 201 of the Defense Authorization Amendments and Base Closure and Realignment Act (BRAC) (10 U.S.C. 2687 note); or

(C) Section 2905 of the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. 2687 note); or

(2) The airport is a military installation with both military and civil aircraft operations; and

(3) The airport is classified as a commercial service or reliever airport in the NPIAS. (See 49 U.S.C. 47105(b)(2)). One of the designated airports, if included in the NPIAS, may be a general aviation (GA) airport (public airport other than an air carrier airport, 49 U.S.C. 47102(1), (20)) that was a former military installation closed or realigned under BRAC, as amended, or 10 U.S.C. 2687. (*See* 49 U.S.C. 47118(g)). A general aviation airport must qualify under (1) above.

In designating new candidate airports, the Secretary shall consider if a grant will:

(1) reduce delays at an airport with more than 20,000 hours of annual delays in commercial passenger aircraft takeoffs and landings; or

(2) Enhance airport and air traffic control system capacity in a metropolitan area or reduce current and projected flight delays.

The application for new designations will be evaluated in terms of how the proposed projects will contribute to reducing delays and/or how the airport will enhance air traffic or airport system capacity and provide adequate user services.

Project Evaluation

Recently realigned or closed military airports, as well as active military airfields with new joint-use agreements, have the greatest need of funding to convert to, or to incorporate, civil airport operations. Newly converted airports and new joint-use locations frequently have minimal capital development resources and will therefore receive priority consideration for designation and MAP funding. The FAA will evaluate the need for eligible projects based upon information in the candidate airport's five-year Airport Capital Improvement Plan (ACIP). These projects need to be related to development of that airport and/or the air traffic control system capacity.

1. The FAA will evaluate candidate airports and/or the airports such candidate airports will relieve based on the following specific factors:

- Compatibility of airport roles and the ability of the airport to provide an adequate airport facility;
- The capability of the candidate airport and its airside and landside complex to serve aircraft that otherwise must use a congested airport;
- Landside surface access;
- Airport operational capability, including peak hour and annual capacities of the candidate airport;
- Potential of other metropolitan area airports to relieve the congested airport;
- Ability to satisfy, relieve, or meet air cargo demand within the metropolitan area;
- Forecasted aircraft and passenger levels, type of commercial service anticipated, *i.e.,* scheduled or charter commercial service;
- Type and capacity of aircraft projected to serve the airport and level of operations at the congested airport and the candidate airport;
- The potential for the candidate airport to be served by aircraft or users, including the airlines, serving the congested airport;
- Ability to replace an existing commercial service or reliever airport serving the area; and
- Any other documentation to support the FAA designation of the candidate airport.

2. The FAA will evaluate the extent to which development needs funded through MAP will make the airport a viable civil airport that will enhance system capacity or reduce delays.

Application Procedures and Required Documentation

Airport sponsors applying for designation or redesignation must complete and submit an SF 424, Application for Federal Assistance, and provide supporting documentation to the appropriate FAA Airports regional or district office serving that airport.

Standard Form 424: Sponsors may obtain this fillable form at *http://www.faa.gov/airports_airtraffic/airports/regional_guidance/northwest_mountain/airports_resources/forms/media/applications/application_sf_424.doc.*

Applicants should fill this form out completely, including the following:

- Mark Item 1, Type of Submission as a "pre-application" and indicate it is for "construction".
- Mark item 8, Type of Application as "new", and in "other", fill in "Military Airport Program".
- Fill in Item 11, Descriptive Title of Applicants Project. "Designation (or redesignation) to the Military Airport Program".
- In Item 15a, Estimated Funding, indicate the total amount of funding requested from the MAP during the entire term for which you are applying.

Supporting Documentation

(A) Identification as a Current or Former Military Airport. The application must identify the airport as either a current or former military airport and indicate whether it was:

(1) Closed or realigned under Section 201 of the Defense Authorization Amendments and Base Closure and Realignment Act, and/or Section 2905 of the Defense Base Closure and Realignment Act of 1990 (Installations Approved for Closure by the Defense Base Realignment and Closure Commissions), or

(2) Closed or realigned pursuant to 10 U.S.C. 2687 as excess property (bases announced for closure by Department of Defense (DOD) pursuant to this title after September 30, 1977 (this is the date of announcement for closure and not the date the property was deeded to the airport sponsor)), or

(3) A military installation with both military and civil aircraft operations. A general aviation airport applying for the MAP may be joint-use but must also qualify under (1) or (2) above.

(B) Qualifications for MAP:

Submit documents for (1) through (7) below:

(1) Documentation that the airport meets the definition of a "public airport" as defined in 49 U.S.C. Sec. 47102(20).

(2) Documentation indicating the required environmental review for civil reuse or joint-use of the military airfield has been completed. This environmental review need not include review of the individual projects to be funded by the MAP. Rather, the documentation should reflect that the environmental review necessary to convey the property, enter into a long-term lease, or finalize a joint-use agreement has been completed. The military department conveying or leasing the property, or entering into a joint-use agreement, has the lead responsibility for this environmental review. To meet AIP requirements the environmental review and approvals must indicate that the operator or owner of the airport has good title, satisfactory to the Secretary, or assures that good title will be acquired.

(3) For a former military airport, documentation that the eligible airport sponsor holds or will hold satisfactory title, a long-term lease in furtherance of conveyance of property for airport purposes, or a long-term interim lease for 25 years or longer to the property on which the civil airport is being located. Documentation that an application for surplus or BRAC airport property has been accepted by the Federal Government is sufficient to indicate the eligible airport sponsor holds or will hold satisfactory title or a long-term lease.

(4) For a current military airport, documentation that the airport sponsor has an existing joint-use agreement with the military department having jurisdiction over the airport. For all first time applicants a copy of the existing joint-use agreement must be submitted with the application. This is necessary so the FAA can legally issue grants to the sponsor. Here and in (3) directly above, the airport must possess the necessary property rights in order to accept a grant for its proposed projects during FY 2011.

(5) Documentation that the airport is classified as a "commercial service airport" or a "reliever airport" as defined in 49 U.S.C. 47102(7) and 47102(22), unless the airport is applying for the general aviation slot.

(6) Documentation that the airport owner is an eligible airport "sponsor" as defined in 49 U.S.C. 47102(24).

(7) Documentation that the airport has an FAA approved airport layout plan (ALP) and a five-year airport capital improvement plan (ACIP) indicating all eligible grant projects proposed to be funded either from the MAP or other portions of the AIP.

(C) Evaluation Factors:

Submit information on the items below to assist in our evaluation:

(1) Information identifying the existing and potential levels of visual or instrument operations and aeronautical activity at the current or former military airport and, if applicable, the congested airport. Also, if applicable, information on how the airport contributes to air traffic system or airport system capacity. If served by commercial air carriers, the revenue passenger and cargo levels should be provided.

(2) A description of the airport's projected civil role and development needs for transitioning from use as a military airfield to a civil airport. Include how development projects would serve to reduce delays at an airport with more than 20,000 hours of annual delays in commercial passenger aircraft takeoffs and landings; or enhance capacity in a metropolitan area or reduce current and projected flight delays.

(3) A description of the existing airspace capacity. Describe how anticipated new operations would affect the surrounding airspace and air traffic

flow patterns in the metropolitan area in or near the airport. Include a discussion of whether operations at this airport create airspace conflicts that may cause congestion or whether air traffic works into the flow of other air traffic in the area.

(4) A description of the airport's five-year ACIP, including a discussion of major projects, their priorities, projected schedule for project accomplishment, and estimated costs. The ACIP must specifically identify the safety, capacity, and conversion related projects, associated costs, and projected five-year schedule of project construction, including those requested for consideration for MAP funding.

(5) A description of those projects that are consistent with the role of the airport and effectively contribute to the joint-use or conversion of the airfield to a civil airport. The projects can be related to various improvement categories depending on what is needed to convert from military to civil airport use, to meet required civil airport standards, and/or to provide capacity to the airport and/or airport system. The projects selected (*e.g.,* safety-related, conversion-related, and/or capacity-related), must be identified and fully explained based on the airport's planned use. Those projects that may be eligible under MAP, if needed for conversion or capacity-related purposes, must be clearly indicated, and include the following information:

Airside

- Modification of airport or military airfield for safety purposes, including airport pavement modifications (*e.g.,* widening), marking, lighting, strengthening, drainage or modifying other structures or features in the airport environs to meet civil standards for airport imaginary surfaces as described in *14 CFR part 77*.
- Construction of facilities or support facilities such as passenger terminal gates, aprons for passenger terminals, taxiways to new terminal facilities, aircraft parking, and cargo facilities to accommodate civil use.
- Modification of airport or military utilities (electrical distribution systems, communications lines, water, sewer, storm drainage) to meet civil standards. Also, modifications that allow utilities on the civil airport to operate independently, where other portions of the base are conveyed to entities other than the airport sponsor or retained by the Government.
- Purchase, rehabilitation, or modification of airport and airport support facilities and equipment, including snow removal, aircraft rescue, fire fighting buildings and equipment, airport security, lighting vaults, and reconfiguration or relocation of eligible buildings for more efficient civil airport operations.
- Modification of airport or military airfield fuel systems and fuel farms to accommodate civil aviation use.
- Acquisition of additional land for runway protection zones, other approach protection, or airport development.
- Cargo facility requirements.
- Modifications, which will permit the airfield to accommodate general aviation users.

Landside

- Construction of surface parking areas and access roads to accommodate automobiles in the airport terminal and air cargo areas and provide an adequate level of access to the airport.
- Construction or relocation of access roads to provide efficient and convenient movement of vehicular traffic to, on, and from the airport, including access to passenger, air cargo, fixed base operations, and aircraft maintenance areas.
- Modification or construction of facilities such as passenger terminals, surface automobile parking lots, hangars, air cargo terminal buildings, and access roads to cargo facilities to accommodate civil use.

(6) An evaluation of the ability of surface transportation facilities (road, rail, high-speed rail, maritime) to provide intermodal connections.

(7) A description of the type and level of aviation and community interest in the civil use of a current or former military airport.

(8) One copy of the FAA-approved ALP for each copy of the application. The ALP or supporting information should clearly show capacity and conversion related projects. Other information such as project costs, schedule, project justification, other maps and drawings showing the project locations, and any other supporting documentation that would make the application easier to understand should also be included. You may also provide photos, which would further describe the airport, projects, and otherwise clarify certain aspects of this application. These maps and ALP's should be cross-referenced with the project costs and project descriptions.

Redesignation of Airports Previously Designated and Applying for up to an Additional Five Years in the Program

Airports applying for redesignation to the Military Airport Program must submit the same information required by new candidate airports applying for a new designation. On the SF 424, Application for Federal Assistance, prescribed by the Office of Management and Budget Circular A–102, airports must indicate their application is for redesignation to the MAP. In addition to the above information, required for new candidates, they must explain:

(1) Why a redesignation and additional MAP eligible project funding is needed to accomplish the conversion to meet the civil role of the airport and the preferred time period for redesignation not to exceed five years;

(2) Why funding of eligible work under other categories of AIP or other sources of funding would not accomplish the development needs of the airport; and

(3) Why, based on the previously funded MAP projects, the projects and/or funding level were insufficient to accomplish the airport conversion needs and development goals.

In addition to the information requested above airports applying for redesignation must provide a reanalysis of their original business/marketing plans (for example, a plan previously funded by the Office of Economic Adjustment or the original Master Plan for the airport) and prepare a report. If there is no existing business/marketing plan a business/marketing plan or strategy must be developed. The report must contain:

(1) Whether the original business/marketing plan is still appropriate;

(2) Is the airport continuing to work towards the goals established in the business/marketing plan;

(3) Discuss how the MAP projects contained in the application contribute to the goals of the sponsor and their plans; and

(4) If the business/marketing plan no longer applies to the current goals of the airport, how has the airport altered the business/marketing plan to establish a new direction for the facility and how do the projects contained in the MAP application aid in the completion of the new direction and goals and by what date does the sponsor anticipate graduating from the MAP.

This notice is issued pursuant to Title 49 U.S.C. 47118.

Issued at Washington, DC, on September 29, 2010.

Steven Rower,

Acting Deputy Director, Office of Airport Planning and Programming.

[FR Doc. 2010–24991 Filed 10–4–10; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Akron Barberton Cluster Railway

[Waiver Petition Docket Number FRA–2010–0144]

The Akron Barberton Cluster Railway (ABC) seeks a waiver of compliance from certain provisions of the Federal hours of service law (49 U.S.C. Chapter 211; HSL). Specifically, ABC requests relief from 49 U.S.C. 21103(a)(4), which states that a train employee may not be required, allowed to remain, or go on duty after that employee has initiated an on-duty period each day for 6 consecutive days unless that employee has had at least 48 hours off duty at the employee's home terminal.

ABC currently has eight train and engine service employees who typically work three assignments commencing at either 5 a.m., 6 a.m., or 7 a.m. Each assignment consists of 5 days in duration and averages 7 hours on duty. Specifically, the schedules include a Monday through Friday shift beginning at 5 a.m.; a Sunday through Thursday shift beginning at 6 a.m.; and a Tuesday through Saturday shift beginning at 7 a.m. The employees have set hours, set days off and do not layover at away from their home locations. ABC is requesting that employees may work 6 consecutive days followed by 24 hours off duty. ABC included with its waiver request, documentation indicating that its employees unanimously support its request for relief. ABC's entire petition may be viewed at *http://www.regulations.gov* under the docket number listed above.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2010–0144) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov*.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Issued in Washington, DC, on September 28, 2010.

Robert C. Lauby

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2010–24998 Filed 10–4–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Hoosier Valley Railroad Museum, Inc.

[Waiver Petition Docket Number FRA–2010–0138)]

The Hoosier Valley Railroad Museum, Inc. (HVRM) seeks a waiver of compliance from certain provisions of the Railroad Freight Car Safety Standards, 49 CFR 215.303, which requires stenciling of restricted cars. HVRM owns four cabooses (Car Numbers: B&LE 1989, EL C345, GTW 75072, and EJ&E 184) and a flat car (Car Number: NKP 1946) that are older than 50 years from their date of original construction, and are restricted by the provision of 49 CFR 215.203(a). HVRM is concurrently seeking special approval to continue to use these cars under proceeding according to 49 CFR 215.203(b).

To support its petition to seek relief from the stenciling requirement, HVRM states that it is an Indiana Corporation and a 501(c)(3) non-profit organization whose mission is to preserve railroad history in northwest Indiana. HRVM exercises complete control in the maintenance of these freight cars. Each car subject to this petition is lettered and painted according to its historic appearance at the time of its construction. Stenciling these cars in order to meet the letter of § 215.303 would violate the historic impression that these cars are maintained to preserve.

The cars subject to this waiver are limited in their service by speed, lading and territory. Specifically, their operation will be confined to the Chesapeake & Indiana Railroad over tracks owned by the Town of North Judson, Indiana, at limited track speed, with light tonnage (if any), in accordance with CFR Part 215. These cars will never be subject to regular railroad interchange operations at the hands of a strange crew unfamiliar with their characteristics.

HVRM further stated that its restricted cars will always be operated in context that ensures that each car and its sensibilities are readily accessible and known both to HVRM as operator, and to FRA as railroad safety regulation enforcer. HVRM believes that the greatest inconvenience to the FRA's inspectors would be the identification of obvious defects as to type and obsolete parts on the cars without the benefit of supporting paperwork in hand. This inconvenience could be easily remedied by HVRM making available to the FRA's

inspectors at HVRM's business office all of § 215.203 paperwork concerning each car subject to this petition.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2010–0138) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

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Issued in Washington, DC, on September 28, 2010.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2010–24999 Filed 10–4–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Sierra Northern Railroad Company

[Waiver Petition Docket Number FRA–2010–0129]

The Sierra Northern Railroad Company (SERA) seeks a waiver of compliance from certain provisions of the Railroad Freight Car Safety Standards, 49 CFR 215.303, which requires stenciling of restricted cars according to § 215.203. SERA owns one gondola and four box cars modified as "open air concession car" to be used on SERA's tourist and dinner train operations in Sacramento and the Stanislaus Valley Area. The freight equipment subject to this petition are more than 50 years of age from their original date of construction, and is therefore restricted under § 215.203(a). In the same petition, SERA also requested a Special Approval to continue in service of these equipment in according with § 215.203(b).

To support its petition to seek relief from the stenciling requirements, SERA states that the cars subject to this waiver are operated on a 19-mile portion of the Oakdale Division between Oakdale and Cooperstown, California, and on the Sacramento Division for 14 miles between Woodland and Lovdal Siding near West Sacramento, California. SERA does not interchange the freight equipment subject to this petition with the general system of transpiration. These cars have remained on the respective divisions since acquired for tourist and dinner train service. The maximum speed of operation is 20 miles per hour, and the cars are typically operated no more than 40 miles in a day and approximately 75 days per year. SERA also stated that there has not been an equipment-related derailment of any SERA tourist or dinner train since 1995. These cars are painted to match passenger cars. Stenciling according to § 215.303 would be disruptive to the appearance of the train and might invite unwarranted concerns by passengers.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2010–0129) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

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Issued in Washington, DC, on September 28, 2010.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2010–25001 Filed 10–4–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

The Village of Richton Park, Illinois

[Waiver Petition Docket Number FRA–2010–0137]

The Village of Richton Park, Illinois (Village), seeks a permanent waiver of compliance from a certain provision of the Use of Locomotive Horns at Highway-Rail Grade Crossings, 49 CFR part 222. The Village intends to establish a new quiet zone under the provisions of 49 CFR 222.39. Specifically, the Village is seeking a waiver from the provisions of 49 CFR 222.9, definition of a non-traversable curb, so that a public crossing that will be equipped with flashing lights, gates and medians that complies with all of the requirements necessary to be a "gates with medians" supplemental safety measure (SSM) with non-traversable curbs, except for the fact that the posted highway speed limit is 45 miles per hour (mph) instead of 40 mph as required in the definition, be deemed an acceptable SSM.

49 CFR 222.9, the definition of non-traversable curb, reads as follows, "Non-traversable curb means a highway curb designed to discourage a motor vehicle from leaving the roadway. Non-traversable curbs are used at locations where highway speeds do not exceed 40 mph, and are at least six inches high. Additional design specifications are determined by the standard traffic design specifications used by the governmental entity constructing the curb."

The Village is in the process of establishing a new quiet zone along the Elgin, Joliet, and Eastern Railway's (EJE) Joliet Division, Eastern Subdivision, which would extend from approximately Milepost (MP) 17.82 to MP 20.31. The new quiet zone will consist of three public at-grade crossings: Ridgeland Avenue (DOT #260629R), Central Avenue (DOT #260630K), and Cicero Avenue (DOT #260632Y). The Village seeks a waiver from the requirement that medians with non-traversable curbing may not be used where highway speeds exceed 40 mph. The Cicero Avenue grade crossing is equipped with standard flashing lights, gates and medians that are 330 feet in length north of the crossing, and 1,300 feet in length south of the crossing. The existing curbing on the medians meets the state requirements for non-traversable curb but not the requirements necessary to serve as a SSM. The Village intends to reconstruct the medians to meet the SSM requirement. The posted highway speed is 45 mph.

The Village provides several reasons why the 5 mph difference in speed limit would not diminish the effectiveness of the SSM, and thus the waiver should be granted. First, the existing medians are much wider (12-foot) than the typical medians used for this application. The medians also exceed the nominal required length (100-foot), as they are 330 feet and 1,300 feet in length. Secondly, the existing curbed median has not contributed to any prior incidents or accidents. No accidents have occurred at the crossing in over 20 years. Thirdly, the Illinois Department of Transportation (IDOT) was asked by the Village to review and lower the speed limit. IDOT conducted a speed assessment and determined that 45 mph is the appropriate, safe speed for Cicero Avenue. Fourthly, the median design to be used by the Village follows the IDOT standard, which allows curbed medians on highways with speed limits of 40 or 45 mph. The Village feels that this standard should be allowable under the clause "Additional design specifications * * *" in the definition.

The Village's waiver petition submission included a letter from the Canadian National Railway Company (CN) supporting the approval of the Village's waiver petition. CN owns the EJE.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2010–0137) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

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Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Issued in Washington, DC, on September 28, 2010.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2010–25006 Filed 10–4–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Fillmore & Western Railroad Co.

[Waiver Petition Docket Number FRA–2010–0139]

The Fillmore & Western Railroad Company (FWRY) seeks a waiver of compliance from certain provisions of the Railroad Freight Car Safety Standards, 49 CFR 215.303, which requires stenciling of restricted cars; as well as 49 CFR 224.3, which requires Reflectorization for freight cars. FWRY owns sixteen rail cars that are older than 50 years from their date of original construction, and are restricted by the provision of 49 CFR 215.203(a). FWRY is concurrently seeking special approval to continue to use these cars under proceeding according to 49 CFR 215.203(b).

To support its petition to seek relief from the stenciling and reflectorization requirements, FWRY states that the cars subject to this waiver are only used for tourist passengers, films, movies, props, still photos and the like. Although FWRY is considered a general system railroad, these subject cars are not interchanged in or with the general system, and are not freight revenue cars. FWRY asks for this waiver due to the fact that the movie and television companies, still photographers and the like want the cars to be authentic in their antiquated and historic look.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2010–0139) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

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Issued in Washington, DC, on September 28, 2010.

Robert C. Lauby,

Deputy Associate Administrator.

[FR Doc. 2010–25002 Filed 10–4–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request—Thrift Financial Report: Schedules SC, SO, VA, PD, LD, CC, CF, DI, SI, FS, CCR, and VIE

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. Today, the Office of Thrift Supervision within the Department of the Treasury solicits comments on proposed changes to the Thrift Financial Report (TFR), Schedule SC—Consolidated Statement of Condition, Schedule SO—Consolidated Statement of Operations, Schedule VA—Consolidated Valuation Allowances and Related Data, Schedule PD—Consolidated Past Due and Nonaccrual, Schedule LD—Loan Data, Schedule CC—Consolidated Commitments and Contingencies, Schedule CF—Consolidated Cash Flow Information, Schedule DI—Consolidated Deposit Information, Schedule SI—Consolidated Supplemental Information, Schedule FS—Fiduciary and Related Services, and Schedule CCR—Consolidated Capital Requirement, and on a proposed new Schedule VIE—Variable Interest Entities. The changes are proposed to become effective in March 2011.

At the end of the comment period, OTS will analyze the comments and recommendations received to determine if it should modify the proposed revisions prior to giving its final approval. OTS will then submit the revisions to the Office of Management and Budget (OMB) for review and approval.

DATES: Submit written comments on or before December 6, 2010.

ADDRESSES: Send comments to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send facsimile transmissions to FAX number (202) 906–6518; send e-mails to *infocollection.comments@ots.treas.gov;* or hand deliver comments to the Guard's Desk, east lobby entrance, 1700 G Street, NW., on business days between 9 a.m. and 4 p.m. All comments should refer to "TFR Revisions—2011, OMB No. 1550–0023." OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION: You can access sample copies of the proposed 2011 TFR forms on OTS's Web site at *http://www.ots.treas.gov* or you may request them by electronic mail from *tfr.instructions@ots.treas.gov.* You can request additional information about this proposed information collection from James Caton, Acting Managing Director, Economic Policy and Financial Monitoring and Analysis Division, (202) 906–5680, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Title: Thrift Financial Report.
OMB Number: 1550–0023.
Form Number: OTS 1313.
Abstract:

OTS is proposing to revise and extend for three years the TFR, which is currently an approved collection of information.

All OTS-regulated savings associations must comply with the information collections described in this notice. OTS collects this information each calendar quarter or less frequently if so stated. OTS uses this information to monitor the condition, performance, and risk profile of individual institutions and systemic risk among groups of institutions and the industry as a whole. Except for selected items, these information collections are not given confidential treatment.

Current Actions:

I. Overview

OTS last revised the form and content of the TFR in a manner that significantly affected a substantial percentage of institutions in March 2010. Since the beginning of 2010 OTS has evaluated its ongoing information needs. OTS recognizes that the TFR imposes reporting requirements, which are a component of the regulatory burden facing institutions. Another contributor to this regulatory burden is the examination process, particularly on-site examinations during which institution staff spends time and effort responding to inquiries and requests for information designed to assist examiners in evaluating the condition and risk profile of the institution. The amount of attention that examiners direct to risk areas of the institution under examination is, in large part, determined from TFR data. These data, and analytical reports, including the Uniform Thrift Performance Report, assist examiners in scoping and making their preliminary assessments of risks during the planning phase of the examination.

A risk-focused review of the information from an institution's TFR allows examiners to make preliminary risk assessments prior to onsite work. The degree of perceived risk determines the extent of the examination procedures that examiners initially plan for each risk area. If the outcome of these procedures reveals a different level of risk in a particular area, the examiner adjusts the examination scope and procedures accordingly.

TFR data are also a vital source of information for the monitoring and regulatory activities of OTS. Among their benefits, these activities aid in determining whether the frequency of an institution's examination cycle should remain at maximum allowed time intervals, thereby lessening overall regulatory burden. More risk-focused TFR data enhance the ability of OTS to assess whether an institution is experiencing changes in its risk profile that warrant immediate follow-up, which may include accelerating the timing of an on-site examination.

In developing this proposal, OTS considered a range of potential information needs, particularly in the areas of credit risk, liquidity, and liabilities, and identified those additions to the TFR that are most critical and relevant to OTS in fulfilling its supervisory responsibilities. OTS recognizes that increased reporting burden will result from the addition to the TFR of the new items discussed in this proposal. Nevertheless, when viewing these proposed revisions to the TFR within a larger context, they help to enhance the on- and off-site supervision capabilities of OTS, which assist with controlling the overall regulatory burden on institutions.

OTS also considered the potential impacts from the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("the Dodd-Frank Act") that the President signed into law on July 21. The Dodd-Frank Act provides for the combination of the OTS into the Office of the Comptroller of the Currency 12 to 18 months after the enactment date. Employees of the OTS on the transfer date will transfer to the OCC, the FDIC, or a new Consumer Financial Protection Bureau. At this point, no decision about a possible conversion, if any, from the TFR to the Call Report has been made. Nevertheless, effort was made to avoid increasing differences between the two reports. For this reason, the majority of the proposed changes mirror changes proposed for the Call Report. However, proposed are some changes that will further and enhance off-site monitoring and on-site examination efficiency.

Thus, OTS is requesting comment on the following proposed revisions to the TFR that would take effect as of March 31, 2011, unless otherwise noted. These revisions would change the reporting frequency for the number and market value of collective investment funds and common trust funds data reported in Memorandum Item 3 of Schedule FS from annually to quarterly, revise several existing lines, add new lines to the TFR, and add a new Schedule VIE, Variable Interest Entities.

For each of the proposed revisions or new items, OTS is particularly interested in comments from institutions on whether the information proposed to be collected is readily available from existing institution records. OTS also invites comment on whether there are particular proposed revisions for which the new data would be of limited relevance for purposes of assessing risks in a specific segment of the savings association industry. In such cases, OTS requests comments on what criteria, *e.g.,* an asset size threshold or some other measure, we should establish for identifying the specific segment of the savings association industry that we should require to report the proposed information. Finally, OTS seeks comment on whether, for a particular proposed revision, there is an alternative information set that could satisfy OTS data needs and be less burdensome for institutions to report than the new or revised items that OTS has proposed. OTS will consider all of the comments it receives as it formulates a final set of revisions to the TFR for implementation in 2011. The proposed revisions include:

- A breakdown by loan category of the existing troubled debt restructurings for amounts added in the current quarter and amounts included in Schedule SC in compliance with modified terms in Schedule VA, and for troubled debt restructurings that are past due 30 to 89 days, 90 days or more, or in nonaccrual status in Schedule PD;
- Additional data for automobile loans, including securities backed by automobile loans in Schedule SC, interest income from automobile loans in Schedule SO, automobile loans closed, purchased, or sold during the quarter in Schedule CF, and the average daily balance for automobile loans during the quarter in Schedule SI;
- A breakdown in Schedule SC of the existing items for mortgage-backed securities between residential and commercial securities issued or guaranteed by U.S. Government agencies and sponsored enterprises and those that are not;
- New items for the amount and average daily deposits of nonbrokered deposits obtained through the use of deposit listing service companies in Schedule DI;
- A breakdown of the existing items for deposits of individuals, partnerships, and corporations between deposits of individuals and deposits of partnerships and corporations in Schedule DI;
- A new Schedule VIE, Variable Interest Entities, for reporting the categories of assets of consolidated variable interest entities (VIEs) that can be used only to settle the VIEs' obligations, the categories of liabilities of consolidated VIEs without recourse to the savings association's general credit, and the total assets and total liabilities of other consolidated VIEs included in the savings association's total assets and total liabilities, with these data reported separately for securitization trusts,

asset-backed commercial paper conduits, and other VIEs;

• Breakdowns of loans and repossessed assets covered by FDIC loss-sharing agreements by loan and repossessed asset category in Schedule SI, new line in Schedule SI for income received from or accrued on assets covered by the FDIC under loss-sharing agreements, and a breakdown in Schedule PD of loans past due 30 to 89 days, 90 days or more, or in nonaccrual status covered by FDIC loss-sharing agreements;

• A breakdown of the existing items for key person life insurance in Schedule SC into items for general account and separate account life insurance assets;

• New items for the total assets of captive insurance and reinsurance subsidiaries in Schedule SI;

• A change in reporting frequency from annual to quarterly for the data reported in Schedule FS on collective investment funds and common trust funds for those savings associations that currently report fiduciary assets and income annually, i.e., banks with fiduciary assets greater than $250 million or gross fiduciary income greater than 10 percent of bank revenue;

• A new item in Schedule SO for service charges on deposit accounts;

• A new item in Schedule CCR for qualifying noncontrolling (minority) interests in consolidated subsidiaries;

• Two new items in Schedule SC for trust preferred securities;

• A more detailed breakdown by loan type in Schedule VA of general, specific, and total valuation allowances;

• A breakdown by loan type in Schedule VA of classified assets;

• A new line in Schedule DI for time deposits of $100,000 or more with a remaining maturity of one year or less;

• A new line in Schedule DI for deposits in foreign offices, Edge and Agreement subsidiaries, and IBFs;

• A breakdown in Schedule SI of the amortized cost of held-to-maturity securities and the fair value of available-for-sale securities;

• Two new lines in Schedule SI for farmland loans secured by real estate, and loans to finance agricultural production and other loans to farmers;

• Two new lines in Schedule SI for Federal Home Loan Bank advances with a remaining maturity of one year or less, and other borrowings with a remaining maturity of one year or less; and

• A new line in Schedule SI for the amount of liabilities from a savings association's trading activities.

The specific wording of the captions for the new or revised TFR data items discussed in this proposal and the numbering of these data items should be regarded as preliminary.

II. Discussion of Revisions Proposed for March 2011

A. Troubled Debt Restructurings

OTS is proposing that savings associations report additional detail on loans that have undergone troubled debt restructurings in TFR Schedules VA and PD. More specifically, new items are proposed for Schedule VA under two columns for the amount of troubled debt restructured during the current quarter (odd-numbered lines) and the amount of troubled debt restructured that is included in Schedule SC in compliance with the modified terms (even-numbered lines):

VA211, VA212 Construction Loans (Total of VA213–VA218):
VA213, VA214 1–4 Dwelling Units;
VA215, VA216 Multifamily (5 or more) Dwelling Units;
VA217, VA218 Nonresidential Property.

Permanent Loans, Secured by:

VA221, VA222 1–4 Dwelling Units;
VA223, VA224 Multifamily (5 or more) Dwelling Units;
VA 225, VA226 Nonresidential Property (Except Land);
VA227, VA228 Owner-Occupied Nonresidential Property;
VA231, VA232 Other Nonresidential Property;
VA233, VA234 Land;
VA241, VA242 Nonmortgage Loans—Total;
V243, VA244 Commercial Loans—Total;
VA245, VA246 Secured;
VA247, VA248 Unsecured;
VA251, VA252 Credit Card Loans Outstanding—Business;
VA253, VA254 Consumer Loans—Total.

New items are proposed in Schedule PD to add detail to troubled debt restructuring amounts past due and still accruing, 30–89 days (500-series lines), past due and still accruing, 90 days or more (600-series lines), and nonaccrual (700-series lines):

Construction Loans:

PD516, PD616, PD716 1–4 Dwelling Units;
PD517, PD617, PD717 Multifamily (5 or more) Dwelling Units;
PD518, PD618, PD718 Nonresidential Property.

Permanent Loans, Secured by:

PD519, PD619, PD719 1–4 Dwelling Units;
PD525, PD625, PD725 Multifamily (5 or more) Dwelling Units;
PD535, PD635, PD735 Nonresidential Property (Except Land);
PD536, PD636, PD736 Owner-Occupied Nonresidential Property;
PD537, PD637, PD737 Other Nonresidential Property;
PD538, PD638, PD738 Land;
PD539, PD639, PD739 Nonmortgage Loans—Total;
PD540, PD640, PD740 Commercial Loans—Total;
PD541, PD641, PD741 Secured;
PD542, PD642, PD742 Unsecured;
PD545, PD645, PD745 Credit Card Loans Outstanding—Business;
PD560, PD660, PD760 Consumer Loans—Total.

In the aggregate, troubled debt restructurings for all insured institutions have grown from $6.9 billion at year-end 2007, to $24.0 billion at year-end 2008, to $58.1 billion at year-end 2009, with a further increase to $64.0 billion as of March 31, 2010. The proposed additional detail on troubled debt restructurings in Schedules VA and PD would enable OTS to better understand the level of restructuring activity at savings associations, the categories of loans involved in this activity, and, therefore, whether savings associations are working with their borrowers to modify and restructure loans. In particular, to encourage banks and savings associations to work constructively with their commercial borrowers, the federal banking agencies recently issued guidance on commercial real estate loan workouts and small business lending. While this guidance has explained the agencies' expectations for prudent workouts, the agencies do not have adequate and reliable data outside of the examination process to assess restructuring activity for commercial real estate loans and commercial and industrial loans. Further, it is important to separately identify commercial real estate loan restructurings from commercial and industrial loan restructurings given that the value of the real estate collateral is a consideration in an institution's decision to modify the terms of a commercial real estate loan in a troubled debt restructuring, but such collateral protection would normally be absent from commercial and industrial loans for which a loan modification is being explored because of borrowers' financial difficulties.

It is also anticipated that other loan categories will experience continued workout activity in the coming months given that every asset class has been impacted by the recent recession (as evidenced by the increase in past due and nonaccrual assets across all asset

classes). In addition, because credit availability has substantially decreased, borrowers experiencing financial difficulties are left with few alternatives for funding and their creditor institutions will need to evaluate whether to work with them by granting a concession when modifying the terms of their existing loans.

The new data would provide the OTS with the level of information necessary to assess savings associations' troubled debt restructurings to the same extent that other loan quality and performance indicators can be assessed. However, the OTS notes that, under generally accepted accounting principles, troubled debt restructurings do not include changes in lease agreements [1] and we therefore propose to exclude leases from the new items proposed.

B. Auto Loans

OTS is proposing to collect additional information on automobile loans. More specifically, the following new lines are proposed:

SC183 Securities Backed by Auto Loans;
SO173 Auto Loans—Interest Income;
CF401 Auto Loans Closed or Purchased During Quarter;
CF402 Auto Loans Sold During Quarter;
SI886 Auto Loans—Average Daily Balance During Quarter.

Automobile loans are a significant consumer business for many large savings associations. The proposed additional lines will enhance supervisory evaluation and oversight of automobile lending performance and risks.

C. Commercial Mortgage-Backed Securities Issued or Guaranteed by U.S. Government Agencies and Sponsored Agencies

OTS is proposing to split the existing items on mortgage-backed securities (MBS) in Schedule SC to distinguish between residential and commercial MBS issued or guaranteed by U.S. Government agencies and sponsored agencies (collectively, U.S. Government agencies) and residential and commercial MBS issued by others. OTS proposes to revise the following existing lines to report data for residential MBS:

Residential Pass-Through:

SC210 Insured or Guaranteed by an Agency or Sponsored Enterprise of the U.S.;
SC215 Other Pass-Through.

Other Residential Mortgage-Backed Securities (Excluding Bonds):

SC217 Issued or Guaranteed by FNMA, FHLMC, or GNMA;
SC219 Collateralized by Mortgage-Backed Securities Issued or Guaranteed by FNMA, FHLMC, or GNMA;
SC222 Other.

OTS proposes the following new lines to report data for commercial MBS:

Commercial Pass-Through:

SC211 Insured or Guaranteed by an Agency or Sponsored Enterprise of the U.S.;
SC213 Other Pass-Through.

Other Commercial Mortgage-Backed Securities (Excluding Bonds):

SC223 Issued or Guaranteed by FNMA, FHLMC, or GNMA;
SC224 Collateralized by Mortgage-Backed Securities Issued or Guaranteed by FNMA, FHLMC, or GNMA;
SC225 Other.

D. Nonbrokered Deposits Obtained Through the Use of Deposit Listing Service Companies

Savings associations currently report information on their funding in the form of brokered deposits in Schedule DI. These data are an integral component of the regulatory analysis of individual institutions' liquidity and funding, including their reliance on non-core sources to fund their activities.

Deposit brokers have traditionally provided intermediary services for financial institutions and investors. However, the Internet, deposit listing services, and other automated services now enable investors who focus on yield to easily identify high-yielding deposit sources. Such customers are highly rate sensitive and can be a less stable source of funding than typical relationship deposit customers. Because they often have no other relationship with the financial institution, these customers may rapidly transfer funds to other institutions if more attractive returns become available.

OTS expects each institution to establish and adhere to a sound liquidity and funds management policy. The institution's board of directors, or a committee of the board, should also ensure that senior management takes the necessary steps to monitor and control liquidity risk. This process includes establishing procedures, guidelines, internal controls, and limits for managing and monitoring liquidity and reviewing the institution's liquidity position, including its deposit structure, on a regular basis. A necessary prerequisite to sound liquidity and funds management decisions is a sound management information system, which provides certain basic information including data on non-relationship funding programs, such as brokered deposits, deposits obtained through the Internet or other types of advertising, and other similar rate sensitive deposits. Thus, an institution's management should be aware of the number and magnitude of such deposits.

To improve its ability to monitor potentially volatile funding sources, OTS is proposing two lines to Schedule DI in which savings associations would report the amount of deposits and average daily deposits obtained through the use of deposit listing services that are not brokered deposits:

DI117 Total Amount of Deposits Obtained Through Deposit Listing Services That Are Not Brokered Deposits;
DI547 Average Daily Deposits Totals: Deposits Obtained Through Deposit Listing Services That Are Not Brokered Deposits.

A deposit listing service is a company that compiles information about the interest rates offered on deposits, such as certificates of deposit, by insured depository institutions. A particular company could be a deposit listing service (compiling information about certificates of deposits) as well as a deposit broker (facilitating the placement of certificates of deposit). A deposit listing service is not a deposit broker if all of the following four criteria are met:

(1) The person or entity providing the listing service is compensated solely by means of subscription fees (i.e., the fees paid by subscribers as payment for their opportunity to see the rates gathered by the listing service) and/or listing fees (i.e., the fees paid by depository institutions as payment for their opportunity to list or "post" their rates). The listing service does not require a depository institution to pay for other services offered by the listing service or its affiliates as a condition precedent to being listed.

(2) The fees paid by depository institutions are flat fees: They are not calculated on the basis of the number or dollar amount of deposits accepted by the depository institution as a result of the listing or "posting" of the depository institution's rates.

(3) In exchange for these fees, the listing service performs no services except (A) the gathering and transmission of information concerning the availability of deposits; and/or (B) the transmission of messages between depositors and depository institutions (including purchase orders and trade confirmations). In publishing or

[1] Accounting Standards Codification paragraph 470–60–15–11.

displaying information about depository institutions, the listing service must not attempt to steer funds toward particular institutions (except that the listing service may rank institutions according to interest rates and also may exclude institutions that do not pay the listing fee). Similarly, in any communications with depositors or potential depositors, the listing service must not attempt to steer funds toward particular institutions.

(4) The listing service is not involved in placing deposits. Any funds to be invested in deposit accounts are remitted directly by the depositor to the insured depository institution and not, directly or indirectly, by or through the listing service.

E. Deposits of Individuals, Partnerships, and Corporations

Savings associations currently do not report separate breakdowns of their deposit accounts in the TFR by category of depositor. The recent crisis has demonstrated that business depositors' behavioral characteristics are significantly different than the behavioral characteristics of individuals. Thus, separate reporting of deposits of individuals versus deposits of partnerships and corporations would enable the federal banking agencies to better assess the liquidity risk profile of institutions given differences in the relative stability of deposits from these two sources.

OTS is proposing that the following two lines be added to Schedule DI:

DI196 Deposits of Individuals;
DI197 Deposits of Partnerships and Corporations.

Under this proposal, accounts for which the depositor's taxpayer identification number, as maintained on the account in the savings association's records, is a Social Security Number (or an Individual Taxpayer Identification Number [2]) should be treated as deposits of individuals. In general, all other accounts should be treated as deposits of partnerships and corporations. However, line SC710 currently includes all certified and official checks. To limit the reporting burden of this proposed change, official checks in the form of money orders and travelers checks would be reported as deposits of individuals. Certified checks and all other official checks would be reported as deposits of partnerships and corporations. OTS is requesting comment on this approach to reporting certified and official checks.

F. Variable Interest Entities

In June 2009, the Financial Accounting Standards Board (FASB) issued accounting standards that have changed the way entities account for securitizations and special purpose entities. ASU No. 2009–16 (formerly FAS 166) revised ASC Topic 860, Transfers and Servicing, by eliminating the concept of a "qualifying special-purpose entity" (QSPE) and changing the requirements for derecognizing financial assets. ASU No. 2009–17 (formerly FAS 167) revised ASC Topic 810, Consolidations, by changing how a financial institution or other company determines when an entity that is insufficiently capitalized or is not controlled through voting or similar rights, i.e., a "variable interest entity" (VIE), should be consolidated. For most financial institutions, ASU Nos. 2009–16 and 2009–17 took effect January 1, 2010.

Under ASC Topic 810, as amended, determining whether a financial institution is required to consolidate a VIE depends on a qualitative analysis of whether that institution has a "controlling financial interest" in the VIE and is therefore the primary beneficiary of the VIE. The analysis focuses on the institution's power over and interest in the VIE. With the removal of the QSPE concept from generally accepted accounting principles that was brought about in amended ASC Topic 860, an institution that transferred financial assets to an SPE that met the definition of a QSPE before the effective date of these amended accounting standards was required to evaluate whether, pursuant to amended ASC Topic 810, it must begin to consolidate the assets, liabilities, and equity of the SPE as of that effective date. Thus, when implementing amended ASC Topics 860 and 810 at the beginning of 2010, financial institutions began to consolidate certain previously off-balance securitization vehicles, asset-backed commercial paper conduits, and other structures. Going forward, financial institutions with variable interests in new VIEs must evaluate whether they have a controlling financial interest in these entities and, if so, consolidate them. In addition, institutions must continually reassess whether they are the primary beneficiary of VIEs in which they have variable interests.

For those VIEs that savings associations must consolidate, guidance advises institutions to report the assets and liabilities of these VIEs on Schedule SC in the balance sheet category appropriate to the asset or liability. However, ASC paragraph 810–10–45–25 [3] requires a reporting entity to present "separately on the face of the statement of financial position: a. Assets of a consolidated variable interest entity (VIE) that can be used only to settle obligations of the consolidated VIE [and] b. Liabilities of a consolidated VIE for which creditors (or beneficial interest holders) do not have recourse to the general credit of the primary beneficiary." This requirement has been interpreted to mean that "each line item of the consolidated balance sheet should differentiate which portion of those amounts meet the separate presentation conditions." [4] In requiring separate presentation for these assets and liabilities, the FASB agreed with commenters on its proposed accounting standard on consolidation that "separate presentation * * * would provide transparent and useful information about an enterprise's involvement and associated risks in a variable interest entity." [5] The federal banking agencies concur that separate presentation would provide similar benefits to them and other Call Report and TFR users.

Consistent with the presentation requirements discussed above, the banking agencies are proposing to add a new Schedule RC–V, Variable Interest Entities, to the Call Report, and OTS is proposing to add a new Schedule VIE, Variable Interest Entities, to the TFR. Financial institutions would use the proposed new schedules to report a breakdown of the assets of consolidated VIEs that can be used only to settle obligations of the consolidated VIEs and liabilities of consolidated VIEs for which creditors do not have recourse to the general credit of the financial institution. The following proposed categories of assets and liabilities would include some of the same categories presented on the Call Report and TFR balance sheet schedules: Cash and balances due from depository institutions, Held-to-maturity securities; Available-for-sale securities; Securities purchased under agreements to resell, Loans and leases held for sale; Loans

[2] An Individual Taxpayer Identification Number is a tax processing number only available for certain nonresident and resident aliens, their spouses, and dependents who cannot get a Social Security Number. It is a 9-digit number, beginning with the number "9," formatted like a Social Security Number.

[3] Formerly paragraph 22A of FIN 46(R), as amended by FAS 167.

[4] Deloitte & Touche LLP, "Back on-balance sheet: Observations from the adoption of FAS 167," May 2010, page 4 (*http://www.deloitte.com/view/en_US/us/Services/audit-enterprise-risk-services/Financial-Accounting-Reporting/f3a70ca28d9f8210VgnVCM200000bb42f00aRCRD.htm*).

[5] *See* paragraphs A80 and A81 of FAS 167.

and leases, net of unearned income; Allowance for loan and lease losses; Trading assets (other than derivatives); Derivative trading assets; Other real estate owned; Other assets; Securities sold under agreements to repurchase; Derivative trading liabilities; Other borrowed money (other than commercial paper); Commercial paper; and Other liabilities. These assets and liabilities would be presented separately for securitization trusts, asset-backed commercial paper conduits, and other VIEs.

In addition, the federal banking agencies propose to include separate items in the new schedules in which financial institutions would report the total assets and the total liabilities of consolidated VIEs (for which the breakdown of assets and liabilities described above is not reported) to help the agencies understand the magnitude of any VIE assets that are not dedicated solely to settling obligations of the VIE and any VIE liabilities for which creditors may have recourse to the general credit of the bank. These consolidated VIEs' total assets and total liabilities, which would be reported after eliminating intercompany transactions, would also be reported separately for securitization trusts, asset-backed commercial paper conduits, and other VIEs.

G. Assets Covered by FDIC Loss-Sharing Agreements

In March 2010, the federal banking agencies added a four-way breakdown of assets covered by loss-sharing agreements with the FDIC to the Call Report and the TFR. In a January 22, 2010, comment letter to the banking agencies on the agencies' submission for OMB review of proposed Call Report revisions for implementation in 2010, the American Bankers Association (ABA) stated that while the addition of the covered asset items to Schedule RC–M was

> a step in the right direction, ABA believes it would be beneficial to regulators, reporting banks, investors, and the public to have additional, more granular information about the various categories of assets subject to the FDIC loss-sharing agreements. While we recognize that this would result in additional reporting burden on banks, on balance our members feel strongly that the benefit of additional disclosure of loss-sharing data would outweigh the burden of providing these detailed data. Thus, we urge the Agencies and the FFIEC to further revise the collection of data from banks on assets covered by FDIC loss-sharing agreements on the Call Report to include the several changes suggested below. * * * We believe these changes would provide a more precise and accurate picture of a bank's asset quality.

OTS is proposing to revise the TFR along the lines suggested by the ABA by adding the following new lines:

Breakdown of line SI770, Loans and Leases:

SI771 Construction Loans—Total
SI773 Residential—Total
SI717 1–4 Dwelling Units
SI718 Multifamily (5 or More) Dwelling Units
SI775 Nonresidential Property
SI777 Permanent Loans—Total
SI778 Residential—Total
SI779 1–4 Dwelling Units—Total
SI780 Revolving Open-End Loans
SI781 All Other—First Liens
SI782 All Other—Junior Liens
SI783 Multifamily (5 or More) Dwelling Units
SI784 Nonresidential Property—Total
SI785 Owner-Occupied Nonfarm Nonresidential Property
SI786 Other Nonfarm Nonresidential Property
SI787 Land
SI788 Commercial Loans—Total
SI789 Secured
SI790 Unsecured
SI791 Credit Card Loans Outstanding—Business
SI792 Lease Receivables
SI793 Consumer Loans—Total
SI794 Loans on Deposits
SI795 Home Improvement Loans (Not Secured by Real Estate)
SI796 Education Loans
SI797 Auto Loans
SI798 Mobile Home Loans
SI799 Credit Cards
SI800 Other, Including Lease Receivables
SI801 Repossessed Assets—Total
SI802 Real Estate—Total
SI803 Construction
SI804 Residential—Total
SI805 1–4 Dwelling Units
SI806 Multifamily (5 or More) Dwelling Units
SI807 Nonresidential (Except Land)
SI808 Land
SI809 Other Repossessed Assets
SI810 Guaranteed amount of total amount of covered real estate owned
SI811 Total Income Included on Schedule SO Received From or Accrued on Assets Covered by the FDIC Under Loss-Sharing Agreements

Breakdown of Covered Past Due and Nonaccrual Loans and Leases (3 amounts for each line—30–89 days past due and still accruing, 90 days or more past due and still accruing, and nonaccrual):

PD515, PD615, PD715 Construction Loans—Total
PD SUBxxx, PD SUBxxx, PD SUBxxx Residential—Total
PD516, PD616, PD716 1–4 Dwelling Units
PD517, PD617, PD717 Multifamily (5 or More) Dwelling Units
PD518, PD618, PD718 Nonresidential Property
PD SUBxxx, PD SUBxxx, PD SUBxxx Permanent Loans—Total
PD SUBxxx, PD SUBxxx, PD SUBxxx Residential—Total
PD SUBxxx, PD SUBxxx, PD SUBxxx 1–4 Dwelling Units—Total
PD521, PD621, PD721 Revolving Open-End Loans
PD523, PD623, PD723 All Other—First Liens
PD524, PD624, PD724 All Other—Junior Liens
PD525, PD625, PD725 Multifamily (5 or More) Dwelling Units
PD535, PD635, PD735 Nonresidential Property—Total
PD536, PD636, PD736 Owner-Occupied Nonresidential Property
PD537, PD637, PD737 Other Nonresidential Property
PD538, PD638, PD738 Land
PD540, PD640, PD740 Commercial Loans—Total
PD541, PD641, PD741 Secured
PD542, PD642, PD742 Unsecured
PD540, PD643, PD743 Credit Card Loans Outstanding—Business
PD545, PD645, PD745 Lease Receivables
PD SUBxxx, PD SUBxxx, PD SUBxxx Consumer Loans—Total
PD561, PD661, PD761 Loans on Deposits
PD563, PD663, PD763 Home Improvement Loans (Not Secured by Real Estate)
PD565, PD665, PD765 Education Loans
PD567, PD667, PD767 Auto Loans
PD569, PD669, PD769 Mobile Home Loans
PD571, PD671, PD771 Credit Cards
PD580, PD680, PD780 Other, Including Lease Receivables
PD596, PD696, PD796 Guaranteed Amount of Total Amount of Covered Past Due and Nonaccrual Loans and Leases

H. Life Insurance Assets

Financial institutions purchase and hold bank-owned life insurance (BOLI) policies as assets, the premiums for which may be used to acquire general account or separate account life insurance policies. Savings associations currently report the aggregate amount of their life insurance assets in Schedule SC without regard to whether their holdings are general account or separate account policies.

Many financial institutions have BOLI assets, and the distinction between those life insurance policies that represent general account products and

those that represent separate account products has meaning with respect to the degree of credit risk involved as well as performance measures for the life insurance assets in a volatile market environment. In a general account policy, the general assets of the insurance company issuing the policy support the policy's cash surrender value. In a separate account policy, the policyholder's cash surrender value is supported by assets segregated from the general assets of the insurance carrier. Under such an arrangement, the policyholder neither owns the underlying separate account created by the insurance carrier on its behalf nor controls investment decisions in the account. Nevertheless, the policyholder assumes all investment and price risk.

A number of financial institutions holding separate account life insurance policies have recorded significant losses in recent years due to the volatility in the markets and the vulnerability to market fluctuations of the instruments that are investment options in separate account life insurance policies. Information distinguishing between the cash surrender values of general account and separate account life insurance policies would allow the OTS to track savings associations' holdings of both types of life insurance policies with their differing risk characteristics and changes in their carrying amounts resulting from their performance over time. Accordingly, the OTS is proposing to add the following new items:

Key Person Life Insurance:

SC617 General Account Life Insurance Assets;

SC619 Separate Account Life Insurance Assets.

Other BOLI Not Considered Key Person Life Insurance:

SC627 General Account Life Insurance Assets;

SC629 Separate Account Life Insurance Assets.

I. Captive Insurance and Reinsurance Subsidiaries

Captive insurance companies are utilized by banking organizations to "self insure" or reinsure their own risks pursuant to incidental activities authority. A captive insurance company is a limited purpose insurer that may be licensed as a direct writer of insurance or as a reinsurer. Insurance premiums paid by an institution to its captive insurer, and claims paid back to the institution by the captive, are transacted on an intercompany basis, so there is no evidence of this type of self-insurance activity when an institution prepares consolidated financial statements, including its TFR. The cash flows for a captive reinsurer's transactions also are not transparent in an institution's consolidated financial statements.

A number of financial institutions own captive insurers or reinsurers, several of which were authorized to operate more than ten years ago. Some of the most common lines of business underwritten by financial institution captive insurers are credit life, accident, and health; disability insurance; and employee benefits coverage. Additionally, financial institution captive reinsurance subsidiaries may underwrite private mortgage guaranty reinsurance and terrorism risk reinsurance.

As part of their supervisory processes, the federal banking agencies have been following the proliferation of financial institution captive insurers and reinsurers and the performance trends of these captives for the past several years. Collection of financial information regarding the total assets of captive insurance and reinsurance subsidiaries would assist the agencies in monitoring the insurance activities of banking organizations as well as any safety and soundness risks posed to the parent institution from the activities of these subsidiaries.

OTS is proposing to collect two new items in Schedule SI:

SI762 Total assets of captive insurance subsidiaries;

SI763 Total assets of captive reinsurance subsidiaries.

These new items are not expected to be applicable to the vast majority of savings associations. When reporting the total assets of these captive subsidiaries in the proposed new items, savings associations should measure the subsidiaries' total assets before eliminating intercompany transactions between the consolidated subsidiary and other offices or subsidiaries of the consolidated institution.

J. Quarterly Reporting for Collective Investment Funds

For financial institutions that provide fiduciary and related services, the volume of assets under management is an important metric for understanding risk at these institutions and in the banking system. A savings association's assets under management may include such pooled investment vehicles as collective investment funds and common trust funds (hereafter, collectively, CIFs) that it offers to investors. When considering how and where to place funds in pooled investment vehicles, which also include registered investment funds (mutual funds), investors' decisions are highly influenced by risk and return factors. While registered investment funds regularly disclose an array of fund-related data to the U.S. Securities and Exchange Commission and the investing public, the OTS's collection and public disclosure of summary data on CIFs is limited to annual data reported in lines FS610 through FS675 of TFR Schedule FS, Fiduciary and Related Services, as of each December 31.

Like other investment vehicles, CIFs were affected by market disruptions during the recent financial crisis. To detect changes in investor behavior and bank investment management strategies at an early stage in this $2.5 trillion line of business, the banking agencies believe it would be beneficial to change the reporting frequency for the Schedule FS data on collective investment funds and common trust funds from annually to quarterly for those institutions that currently report their fiduciary assets and fiduciary income quarterly. Quarterly filing of these Schedule FS data is required of institutions with total fiduciary assets greater than $250 million (as of the preceding December 31) or with gross fiduciary and related income greater than 10 percent of revenue for the preceding calendar year.

K. Service Charges on Deposit Accounts

Savings associations currently do not report separate detail on service charges on deposit accounts. There has been growing interest in the amount of deposit account service fees charged by financial institutions. Banks currently report this data as a separate component of noninterest income in Call Report Schedule RI. In reporting this item, banks include amounts charged depositors (in domestic offices):

(1) For the maintenance of their deposit accounts with the bank, so-called "maintenance charges,"

(2) For their failure to maintain specified minimum deposit balances,

(3) Based on the number of checks drawn on and deposits made in their deposit accounts,

(4) For checks drawn on so-called "no minimum balance" deposit accounts,

(5) For withdrawals from nontransaction deposit accounts,

(6) For the closing of savings accounts before a specified minimum period of time has elapsed,

(7) For accounts which have remained inactive for extended periods of time or which have become dormant,

(8) For deposits to or withdrawals from deposit accounts through the use of automated teller machines or remote service units,

(9) For the processing of checks drawn against insufficient funds, so-called "NSF check charges," that the bank assesses regardless of whether it decides to pay, return, or hold the check. Exclude subsequent charges levied against overdrawn accounts based on the length of time the account has been overdrawn, the magnitude of the overdrawn balance, or which are otherwise equivalent to interest (report in the appropriate subitem of Schedule RI, item 1.a, "Interest and fee income on loans (in domestic offices)"),

(10) For issuing stop payment orders,

(11) For certifying checks, and

(12) For the accumulation or disbursement of funds deposited to Individual Retirement Accounts (IRAs) or Keogh Plan accounts when not handled by the bank's trust department. Report such commissions and fees received for accounts handled by the bank's trust department in Schedule RI, item 5.a, "Income from fiduciary activities." Exclude penalties paid by depositors for the early withdrawal of time deposits (report as "Other noninterest income" in Schedule RI, item 5.l, or deduct from the interest expense of the related category of time deposits, as appropriate).

OTS is proposing to add the following line to Schedule SO as a detail item of other fees and charges within the noninterest income section:

SO422 Service Charges on Deposit Accounts

L. Qualifying Noncontrolling (Minority) Interests in Consolidated Subsidiaries

Only qualifying noncontrolling (minority) interests in consolidated subsidiaries are allowable in Tier 1 capital. Those that are non-qualifying are not. The existing Schedule CCR computes Tier 1 Capital using Total Equity Capital (Line SC 84), which includes all noncontrolling (minority) interests from Line SC 800. This can be interpreted as permitting all noncontrolling (minority) interests (Line SC 800), whether qualifying or not, to be included in the calculation of Tier 1 Capital. Therefore to clarify the treatment of noncontrolling (minority) interests, OTS is proposing to use Total Savings Association Equity Capital (Line SC 80), which is net of noncontrolling (minority) interests, as the starting point for computation of Tier 1 capital for Schedule CCR. Noncontrolling (minority) interests are then added to Tier 1, per the new line CCR187 described below, only to the extent they are qualifying noncontrolling (minority) interests. This approach is consistent with the approach used on the Call Report. Thus, OTS is proposing to revise one line and add a new line on Schedule CCR to address the treatment of noncontrolling (minority) interests in Tier 1 Capital:

Revise line CCR100 Total Equity Capital (SC84) to CCR100 Total Savings Association Equity Capital (SC80)

Add new line CCR187 Qualifying Noncontrolling (Minority) Interests in Consolidated Subsidiaries.

M. Trust Preferred Securities

As financial institution investments, trust preferred securities are hybrid instruments possessing characteristics typically associated with debt obligations. Although each issue of these securities may involve minor differences in terms, under the basic structure of trust preferred securities a corporate issuer, such as a financial institution holding company, first organizes a business trust or other special purpose entity. This trust issues two classes of securities: common securities, all of which are purchased and held by the corporate issuer, and trust preferred securities, which are sold to investors. The business trust's only assets are deeply subordinated debentures of the corporate issuer, which the trust purchases with the proceeds from the sale of its common and preferred securities. The corporate issuer makes periodic interest payments on the subordinated debentures to the business trust, which uses these payments to pay periodic dividends on the trust preferred securities to the investors. The subordinated debentures have a stated maturity and may also be redeemed under other circumstances. Most trust preferred securities are subject to mandatory redemption upon the repayment of the debentures.

Trust preferred securities meet the definition of a security in FASB Statement No. 115, "Accounting for Certain Investments in Debt and Equity Securities." Because of the mandatory redemption provision in the typical trust preferred security, investments in trust preferred securities would normally be considered debt securities for financial accounting purposes. Accordingly, regardless of the authority under which a financial institution is permitted to invest in trust preferred securities, savings associations should report these investments as debt securities for purposes of these reports (unless, based on the specific facts and circumstances of a particular issue of trust preferred securities, the securities would be considered equity rather than debt securities under Statement No. 115. To better gauge the level of investment in trust preferred securities by savings associations, the OTS is proposing to add the following two lines as detail to other investment securities reported in Schedule SC:

SC187 Trust Preferred Securities Issues By FDIC–Insured Depository Institutions or Their Holding Companies;

SC188 Other Trust Preferred Securities.

N. General, Specific, and Total Valuation Allowances by Major Loan Type

OTS is proposing that savings associations report additional detail on loans for general and specific valuation allowances. The proposed additional detail on valuation allowances in Schedules VA would enable OTS to better understand reserves activity within loan categories at savings associations.

More specifically, new items are proposed for Schedule VA under three columns for the amount of general valuation allowances at the end of the current quarter (1100 series of lines), the amount of specific valuation allowances at the end of the current quarter (1200 series of lines), and the total of valuation allowances at the end of the current quarter (1300 series of lines):

VA1115, VA1215, VA1315 Construction Loans—Total

VA SUBxxx, VA SUBxxx,VA SUBxxx Residential—Total

VA1120, VA1220, VA1320 1–4 Dwelling Units

VA1122, VA1222, VA1322 Multifamily (5 or More) Dwelling Units

VA1130, VA1230, VA1330 Nonresidential Property

VA SUBxxx, VA SUBxxx,VA SUBxxx Permanent Loans—Total

VA SUBxxx, VA SUBxxx,VA SUBxxx Residential—Total

VA SUBxxx, VA SUBxxx,VA SUBxxx 1–4 Dwelling Units—Total

VA1140, VA1240, VA1340 Revolving Open-End Loans

VA1145, VA1245, VA1345 All Other—First Liens

VA1147, VA1247, VA1347 All Other—Junior Liens

VA1150, VA1250, VA1350 Multifamily (5 or More) Dwelling Units

VA1160, VA1260, VA1360 Nonresidential Property—Total

VA1162, VA1262, VA1362 Owner-Occupied Nonresidential Property

VA1163, VA1263, VA1363 Other Nonresidential Property

VA1165, VA1265, VA1365 Land

VA1170, VA1270, VA1370 Commercial Loans—Total

VA1172, VA1272, VA1372 Secured
VA1173, VA1273, VA1373 Unsecured
VA1174, VA1274, VA1374 Credit Card Loans Outstanding—Business
VA1176, VA1276, VA1376 Lease Receivables
VA SUBxxx, VA SUBxxx,VA SUBxxx Consumer Loans—Total
VA1182, VA1282, VA1382 Loans on Deposits
VA1183, VA1283, VA1383 Home Improvement Loans (Not Secured by Real Estate)
VA1184, VA1284, VA1384 Education Loans
VA1185, VA1285, VA1385 Auto Loans
VA1186, VA1286, VA1386 Mobile Home Loans
VA1187, VA1287, VA1387 Credit Cards
VA1188, VA1288, VA1388 Other, Including Lease Receivables

O. Classified Assets by Major Loan Type

OTS is proposing that savings associations report additional detail on classified assets by major loan type. The proposed additional detail on classified assets in Schedules VA would enable OTS to better understand asset quality within loan categories at savings associations.

More specifically, new items are proposed for Schedule VA under four columns for the amount of special mention assets at the end of the current quarter (1400 series of lines), the amount of substandard assets at the end of the current quarter (1500 series of lines), the amount of doubtful assets at the end of the current quarter (1600 series of lines), and the amount of loss assets at the end of the current quarter (1700 series of lines):

VA1415, VA1515, VA1615, VA1715 Construction Loans—Total
VA SUBxxx, VA SUBxxx, VA SUBxxx, VA SUBxxx Residential—Total
VA1420, VA1520, VA1620, VA1720 1–4 Dwelling Units
VA1422, VA1522, VA1622, VA1722 Multifamily (5 or More) Dwelling Units
VA1430, VA1530, VA1630, VA1730 Nonresidential Property
VA SUBxxx, VA SUBxxx, VA SUBxxx, VA SUBxxx Permanent Loans—Total
VA SUBxxx, VA SUBxxx, VA SUBxxx, VA SUBxxx Residential—Total
VA SUBxxx, VA SUBxxx, VA SUBxxx, VA SUBxxx 1–4 Dwelling Units—Total
VA1440, VA1540, VA1640, VA1740 Revolving Open-End Loans
VA1445, VA1545, VA1645, VA1745 All Other—First Liens
VA1447, VA1547, VA1647, VA1747 All Other—Junior Liens
VA1450, VA1550, VA1650, VA1750 Multifamily (5 or More) Dwelling Units
VA1460, VA1560, VA1660, VA1760 Nonresidential Property—Total
VA1462, VA1562, VA1662, VA1762 Owner-Occupied Nonresidential Property
VA1463, VA1563, VA1663, VA1763 Other Nonresidential Property
VA1465, VA1565, VA1665, VA1765 Land
VA1470, VA1570, VA1670, VA1770 Commercial Loans—Total
VA1472, VA152, VA1672, VA1772 Secured
VA1473, VA1573, VA1673, VA1773 Unsecured
VA1475, VA1575, VA1675, VA1775 Credit Card Loans Outstanding—Business
VA1476, VA1576, VA1676, VA1776 Lease Receivables
VASUBxxx, VASUBxxx, VASUBxxx, VASUBxxx Consumer Loans—Total
VA1482, VA1582, VA1682, VA1782 Loans on Deposits
VA1483, VA1583, VA1683, VA1783 Home Improvement Loans (Not Secured by Real Estate)
VA1484, VA1584, VA1684, VA1784 Education Loans
VA1485, VA1585, VA1685, VA1785 Auto Loans
VA1486, VA1586, VA1686, VA1786 Mobile Home Loans
VA1487, VA1587, VA1687, VA1787 Credit Cards
VA1488, VA1588, VA1688, VA1788 Other, Including Lease Receivables

Request for Comments: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number.

In this notice, OTS is soliciting comments concerning the following information collection.

Statutory Requirement: 12 U.S.C. 1464(v) imposes reporting requirements for savings associations.

Type of Review: Revision of currently approved collections.

Frequency of Response: Quarterly; Annually.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 753 savings associations.

Estimated Burden Hours per Respondent: 60.0 hours average for quarterly schedules and 2.0 hours average for schedules required only annually plus recordkeeping of an average of one hour per quarter.

Estimated Total Annual Burden: 188,712 burden hours.

OTS is proposing to revise the TFR, which is currently an approved collection of information, in March 2011. The effect on reporting burden of the proposed revisions to the TFR requirements will vary from institution to institution depending on the institution's asset size and its involvement with the types of activities or transactions to which the proposed changes apply.

The proposed TFR changes that would take effect as of March 31, 2011 would change the reporting frequency for the number and market value of collective investment funds and common trust funds data reported in Memorandum Item 3 of Schedule FS, revise several existing lines, add new lines to the TFR, and add a new Schedule VIE, Variable Interest Entities.

OTS estimates that the implementation of these reporting revisions will result in an increase in the current reporting burden imposed by the TFR on all savings associations.

As part of the approval process, we invite comments addressing one or more of the following points:

a. Whether the proposed revisions to the TFR collections of information are necessary for the proper performance of the agency's functions, including whether the information has practical utility;

b. The accuracy of the agency's estimate of the burden of the collection of information;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques, the Internet, or other forms of information technology; and

e. Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

OTS will summarize the comments received and include them in the request for OMB approval. All comments will become a matter of public record.

Clearance Officer: Ira L. Mills, (202) 906–6531, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Desk Officer for OTS, FAX: (202) 395–6974, U.S. Office of Management and Budget, 725—17th Street, NW., Room 10235, Washington, DC 20503.

Dated: September 29, 2010.

Ira L. Mills,

Paperwork Clearance Officer, Office of Chief Counsel, Office of Thrift Supervision.

[FR Doc. 2010–24883 Filed 10–4–10; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

United States Mint

Change to "Procedures To Qualify for Bulk Purchase of Silver Bullion Coins"

AGENCY: United States Mint, Department of the Treasury.

ACTION: Notice.

SUMMARY: The United States Mint has revised the requirements to become an Authorized Purchaser of American Eagle Silver Bullion Coins.

The revised qualification requirements are documented in the revised "Procedures to Qualify for Bulk Purchase of Silver Bullion Coins." This document can be accessed at *http://www.usmint.gov/consumer/index.cfm?action=AmericanEagles.* These changes apply to new applications effective immediately.

Significant modifications include the addition of the America the Beautiful Silver Bullion Coin™; Program to the Background section, clarifications to the "Purpose" section and "Marketing Support" section, and adjustments to the "Experienced Market-Maker in Silver Bullion Coins" section and "Tangible Net Worth" section. Changes to the accounting certification requirements and agreement terms and conditions are also incorporated.

A new section has been added entitled "Right to Temporarily Refrain from the Review of New Applications" during periods in which the allocation of a bullion product is required. Other minor changes have been made that provide further clarifications to various production descriptions and/or the silver bullion coin program in accordance with 31 U.S.C. 5112(e)&(f).

FOR FURTHER INFORMATION CONTACT: B. B. Craig, Associate Director for Sales and Marketing; United States Mint; 801 9th Street, NW.; Washington, DC 20220; or call 202–354–7500.

Authority: 31 U.S.C. 5112(e)&(f).

Dated: September 30, 2010.

Andrew D. Brunhart,

Deputy Director, United States Mint.

[FR Doc. 2010–24915 Filed 10–4–10; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[Docket ID OTS–2010–0030]

Open Meeting of the OTS Mutual Savings Association Advisory Committee

AGENCY: Department of the Treasury, Office of Thrift Supervision.

ACTION: Notice of meeting.

SUMMARY: The OTS Mutual Savings Associations Advisory Committee (MSAAC) will convene a meeting on Wednesday, October 20, 2010, beginning at 9:30 a.m. Eastern Time. The meeting will be open to the public. Members of the public interested in attending the meeting and members of the public who require auxiliary aid should e-mail OTS at *mutualcommittee@ots.treas.gov* or call (202) 906–6429 to obtain information on how to attend the meeting.

DATES: The meeting will be held on Wednesday, October 20, 2010, at 9:30 a.m. Eastern Time.

ADDRESSES: The meeting will be held in Berkley B, Third Floor, Sheraton Boston Hotel, 39 Dalton Street, Boston, MA 02199. The public is invited to submit written statements to the MSAAC by any one of the following methods:

- *E-mail address: mutualcommittee@ots.treas.gov;* or
- *Mail:* to Charlotte Bahin, Designated Federal Official, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552 in triplicate.

The agency must receive statements no later than October 13, 2010.

FOR FURTHER INFORMATION CONTACT: Charlotte M. Bahin, Designated Federal Official, (202) 906–6452, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: By this notice, the Office of Thrift Supervision is announcing that the OTS Mutual Savings Association Advisory Committee will convene a meeting on Wednesday, October 20, 2010, beginning at 9:30 a.m. Eastern Time. The meeting will be open to the public. Anyone wishing to attend the meeting, and members of the public who require auxiliary aid, must contact the Office of Thrift Supervision at 202–906–6429 or *mutualcommittee@ots.treas.gov* by 5 p.m. Eastern Time on Wednesday, October 13, 2010, to inform OTS of his or her desire to attend the meeting and to obtain information on how to attend the meeting. The purpose of the meeting is to advise OTS on what regulatory changes or other steps OTS may be able to take to ensure the continued health and viability of mutual savings associations, and other issues of concern to the existing mutual savings associations.

Dated: September 29, 2010.

By the Office of Thrift Supervision.

Deborah Dakin,

Acting Chief Counsel.

[FR Doc. 2010–24846 Filed 10–4–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Identifying Information Associated With Persons Whose Property and Interests in Property Are Blocked Pursuant to the Executive Order of September 28, 2010, "Blocking Property of Certain Persons With Respect to Serious Human Rights Abuses by the Government of Iran and Taking Certain Other Actions"

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing additional identifying information associated with the eight individuals listed in the Annex to the Executive Order of September 28, 2010, "Blocking Property of Certain Persons With Respect to Serious Human Rights Abuses by the Government of Iran and Taking Certain Other Actions," whose property and interests in property are therefore blocked.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue NW., (Treasury Annex), Washington, DC 20220, *Tel.:* 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, *Tel.:* 202–622–0077.

Background

On September 28, 2010, the President issued the Executive Order "Blocking Property of Certain Persons With Respect to Serious Human Rights Abuses by the Government of Iran and Taking Certain Other Actions" (the "Order") pursuant to, *inter alia,* the

International Emergency Economic Powers Act (50 U.S.C. 1701–06) (IEEPA) and the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Pub. L. 111–195). In the Order, the President took additional steps with respect to the national emergency declared in Executive Order 12957 of March 15, 1995.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any United States person, of persons listed in the Annex to the Order and of persons determined by the Secretary of the Treasury, in consultation with or at the recommendation of the Secretary of State, to satisfy certain criteria set forth in the Order.

The Annex to the Order lists eight individuals whose property and interests in property are blocked pursuant to the Order. OFAC is publishing additional identifying information associated with those individuals. As noted in the listings below, the property and interests in property of one of those individuals also is blocked pursuant to another OFAC sanctions program. Agents or affiliates of Iran's Islamic Revolutionary Guard Corps whose property and interests in property are blocked pursuant to IEEPA include a reference to the "IRGC" at the end of their listings on OFAC's Specially Designated Nationals and Blocked Persons List ("SDN" list). *See* 31 CFR 561.201(a)(5) note.

The listings for those individuals on the SDN list now appear as follows:

Individuals

1. JAFARI, Mohammad Ali (a.k.a. JAFARI, Ali; a.k.a. JA'FARI, Mohammad Ali; a.k.a. JAFARI–NAJAFABADI, Mohammad Ali; a.k.a. "JA'FARI, Aziz"), c/o IRGC, Tehran, Iran; DOB 1 Sep 1957; POB Yazd, Iran; Commander-in-Chief, Islamic Revolutionary Guard Corps; Commander, Islamic Revolutionary Guard Corps; Major General; Brigadier Commander (individual) [NPWMD] [IRGC] [IRAN–HR].
2. MAHSOULI, Sadeq (a.k.a. MAHSULI, Sadeq); DOB 1959; POB Orumieh, Iran; Minister of Welfare and Social Security; Former Minister of the Interior and Deputy Commander-in-Chief of the Armed Forces for Law Enforcement (individual) [IRAN–HR].
3. MOHSENI–EJEI, Qolam-Hossein (a.k.a. MOHSENI EJEI, Gholam Hossein); DOB circa 1956; POB Ejiyeh, Iran; Prosecutor-General of Iran; Hojjatoleslam; Former Minister of Intelligence (individual) [IRAN–HR].
4. MORTAZAVI, Saeed (a.k.a. MORTAZAVI, Sa'id); DOB 1967; POB Meibod, Yazd, Iran; Head, Iranian Anti-Smuggling Task Force; Former Prosecutor-General of Tehran (individual) [IRAN–HR].
5. MOSLEHI, Heydar (a.k.a. MOSLEHI, Heidar), Ministry of Intelligence, Second Negarestan Street, Pasdaran Avenue, Tehran, Iran; DOB 1956; POB Isfahan, Iran; Minister of Intelligence; Hojjatoleslam (individual) [IRAN–HR].
6. NAJJAR, Mostafa Mohammad; DOB 1956; POB Tehran, Iran; Minister of the Interior; Deputy Commander-in-Chief of the Armed Forces for Law Enforcement (individual) [IRAN–HR].
7. RADAN, Ahmad-Reza; DOB 1963; alt. DOB 1964; POB Isfahan, Iran; Deputy Chief, National Police; Deputy Police Chief; Brigadier General (individual) [IRAN–HR].
8. TAEB, Hossein (a.k.a. TAEB, Hassan; a.k.a. TAEB, Hosein; a.k.a. TAEB, Hussayn); DOB 1963; POB Tehran, Iran; Deputy Commander for Intelligence, Islamic Revolutionary Guard Corps; Hojjatoleslam; Former Commander of the Basij Forces (individual) [IRGC] [IRAN–HR].

Dated: September 29, 2010.

Adam Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2010–24861 Filed 10–4–10; 8:45 am]

BILLING CODE 4811–42–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of Specially Designated Nationals and Blocked Persons Pursuant to Executive Order 12978

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control ("OFAC") is publishing the names of seven individuals whose property and interests in property have been unblocked pursuant to Executive Order 12978 of October 21, 1995, *Blocking Assets and Prohibiting Transactions With Significant Narcotics Traffickers.*

DATES: The unblocking and removal from the list of Specially Designated Nationals and Blocked Persons ("SDN List") of the individuals identified in this notice whose property and interests in property were blocked pursuant to Executive Order 12978 of October 21, 1995, is effective on September 29, 2010.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on demand service at (202) 622–0077.

Background

On October 21, 1995, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) ("IEEPA"), issued Executive Order 12978 (60 FR 54579, October 24, 1995) (the "Order"). In the Order, the President declared a national emergency to deal with the threat posed by significant foreign narcotics traffickers centered in Colombia and the harm that they cause in the United States and abroad.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in an Annex to the Order; (2) any foreign person determined by the Secretary of Treasury, in consultation with the Attorney General and Secretary of State: (a) To play a significant role in international narcotics trafficking centered in Colombia; or (b) to materially assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of persons designated in or pursuant to the Order; and (3) persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to be owned or controlled by, or to act for or on behalf of, persons designated pursuant to the Order.

On September 29, 2010 the Director of OFAC removed from the SDN List the seven individuals listed below, whose property and interests in property were blocked pursuant to the Order:

1. ALZATE SALAZAR, Luis Alfredo, c/o COINTERCOS S.A., Bogota, Colombia; c/o DEPOSITO

POPULAR DE DROGAS S.A., Bogota, Colombia; c/o DROGAS LA REBAJA BOGOTA S.A., Bogota, Colombia; c/o LABORATORIOS KRESSFOR DE COLOMBIA S.A., Bogota, Colombia; DOB 27 Nov 1957; Cedula No. 16595689 (Colombia) (individual) [SDNT]

2. AVILA LOPEZ, Gabriel, c/o ADMINISTRADORA DE SERVICIOS VARIOS CALIMA S.A., Cali, Colombia; c/o CHAMARTIN S.A., Cali, Colombia; DOB 3 Aug 1963; Cedula No. 16689631 (Colombia); Passport 16689631 (Colombia) (individual) [SDNT]

3. BAEZA MOLINA, Carlos Alberto, c/o DERECHO INTEGRAL Y CIA. LTDA., Cali, Colombia; c/o INVERSIONES MIGUEL RODRIGUEZ E HIJO, Cali, Colombia; DOB 6 Mar 1958; Cedula No. 16621765 (Colombia) (individual) [SDNT]

4. CHAPARRO MARTINEZ, Elizabeth, c/o ADMINISTRADORA DE SERVICIOS VARIOS CALIMA S.A., Cali, Colombia; DOB 5 May 1968; Cedula No. 31973372 (Colombia); Passport 31973372 (Colombia) (individual) [SDNT]

5. DUQUE CORREA, Francisco Javier, c/o ALMACAES S.A., Bogota, Colombia; c/o CORPORACION DE ALMACENES POR DEPARTAMENTOS S.A., Bogota, Colombia; c/o G.L.G. S.A., Bogota, Colombia; c/o RAMAL S.A., Bogota, Colombia; DOB 04 Apr 1948; POB Medellin, Colombia; Cedula No. 8292581 (Colombia); Passport P009253 (Colombia) (individual) [SDNT]

6. FRANCO RUIZ, Nestor Raul, Carrera 142 No. 18A–80 Casa 23, Cali, Colombia; Avenida 5AN No. 51N–27, Cali, Colombia; DOB 21 Aug 1967; POB Cali, Colombia; Cedula No. 16744648 (Colombia); Passport AF828495 (Colombia) (individual) [SDNT]

7. PEREZ NARVAEZ, Oliverio, Avenida 4 No. 7–75, Cali, Colombia; c/o INTERCONTINENTAL DE AVIACION S.A., Bogota, Colombia; DOB 9 Mar 1938; POB Riofrio, Valle, Colombia; Cedula No. 6488451 (Colombia); Passport AG400146 (Colombia); alt. Passport AG069729 (Colombia) (individual) [SDNT]

Dated: September 29, 2010.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2010–24856 Filed 10–4–10; 8:45 am]

BILLING CODE 4811–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of Specially Designated Nationals and Blocked Persons Pursuant To the Foreign Narcotics Kingpin Designation Act

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control ("OFAC") is publishing the names of one individual whose property and interests in property have been unblocked pursuant to the Foreign Narcotics Kingpin Designation Act ("Kingpin Act") (21 U.S.C. 1901–1908, 8 U.S.C. 1182).

DATES: The unblocking and removal from the list of Specially Designated Nationals and Blocked Persons ("SDN list") of the individual identified in this notice whose property and interests in property were blocked pursuant to the Kingpin Act, is effective on September 29, 2010.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, U.S. Department of the Treasury, Office of Foreign Assets Control, Washington, DC 20220, tel.: 202–622–2420.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) via facsimile through a 24-hour fax-on demand service at (202) 622–0077.

Background

On December 3, 1999, the Kingpin Act was signed into law by the President of the United States. The Kingpin Act provides a statutory framework for the President to impose sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and to the benefits of trade and transactions involving U.S. persons and entities.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, that is owned or controlled by significant foreign narcotics traffickers, as identified by the President. In addition, the Secretary of the Treasury consults with the Attorney General, the Director of the Central Intelligence Agency, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security when designating and blocking the property or interests in property, subject to U.S. jurisdiction, of persons or entities found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; and/or (3) playing a significant role in international narcotics trafficking.

On September 29, 2010, OFAC removed from the SDN list the individual listed below, whose property and interests in property were blocked pursuant to the Kingpin Act.

1. MATTHEW, Karen, c/o Freight Movers International, Basseterre, Saint Kitts and Nevis; DOB 27 Jan 1964; POB St Vincent & Grenadines (individual) [SDNTK]

Dated: September 29, 2010.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2010–24859 Filed 10–4–10; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Rural Health Advisory Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Veterans' Rural Health Advisory Committee will hold a meeting on October 13–14, 2010, at the Hyatt Regency Washington on Capitol Hill, 400 New Jersey Avenue, NW., Washington, DC. The sessions will be open to the public from 8 a.m. until 9:15 a.m. and from 12:30 p.m. until 4:45 p.m. on October 13 and from 8 a.m. until 1:45 p.m. on October 14.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on health care issues affecting enrolled Veterans residing in rural areas. The Committee examines programs and policies that impact the provision of VA health care to enrolled Veterans residing in rural areas, and discusses ways to improve and enhance VA services for these Veterans.

On the morning of October 13, the Committee will hear from its Chairman,

the Director of the VA Office of Rural Health and the VA Under Secretary for Health. The Committee will then convene a closed session in order to protect patient privacy as the Committee tours the Washington, DC VA Medical Center. Closing portion of the session is in accordance with 5 U.S.C. 552b(c)(6). In the afternoon, the Committee will hold discussions on the VA response to its 2009 Annual Report to the Secretary, the progress of its 2010 brief to the Secretary, and the Office of Rural Health Strategic Plan. The Committee will hear presentations from the Directors of the three field-based Veterans Rural Health Resource Centers and a field-based Veterans Integrated Service Network Rural Consultant.

On October 14, the Committee will hear presentations from the Senior Advisor to the Secretary, the Director of the VA Voluntary Services, and the Director of VA Office of Readjustment Counseling Services. The Committee will complete its annual ethics review, and discuss other committee management items. A 15 minute period will be reserved at 12:45 p.m. for public comments. Individuals who speak are invited to submit a 1–2 page summaries of their comments at the time of the meeting for inclusion in the official meeting record. Members may also submit written statements for the Committee's review to Ms. Christina White, Designated Federal Officer, Department of Veterans Affairs, Office of Rural Health (10A5A), 810 Vermont Avenue, NW., Washington, DC 20420, or e-mail at *rural.health.inquiry@va.gov.*

Any member of the public seeking additional information should contact Ms. White at (202) 461–7100.

Dated: September 29, 2010.

By Direction of the Secretary.

Vivian Drake,

Acting Committee Management Officer.

[FR Doc. 2010–24891 Filed 10–4–10; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Tuesday,
October 5, 2010

Part II

Department of Labor

Employment and Training Administration

20 CFR Part 655
Wage Methodology for the Temporary Non-Agricultural Employment H–2B Program; Proposed Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

RIN 1205–AB61

Wage Methodology for the Temporary Non-Agricultural Employment H–2B Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Proposed rule; request for comments.

SUMMARY: The Department of Labor (the Department or DOL) proposes to amend its regulations governing the certification of the employment of nonimmigrant workers in temporary or seasonal non-agricultural employment and the enforcement of the obligations applicable to employers of such nonimmigrant workers. This Notice of Proposed Rulemaking (NPRM or proposed rule) proposes to revise and solicits comments on the methodology by which the Department calculates the prevailing wages to be paid to H–2B workers and U.S. workers recruited in connection with a temporary labor certification for use in petitioning the Department of Homeland Security (DHS) to employ a nonimmigrant worker in H–2B status.

DATES: Interested persons are invited to submit written comments on the proposed rule on or before November 4, 2010.

ADDRESSES: You may submit comments, identified by Regulatory Information Number (RIN) 1205–AB61, by any one of the following methods:

- *Federal e-Rulemaking Portal www.regulations.gov.* Follow the Web site instructions for submitting comments.
- *Mail or Hand Delivery/Courier:* Please submit all written comments (including disk and CD–ROM submissions) to Thomas Dowd, Administrator, Office of Policy Development and Research, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5641, Washington, DC 20210.

Please submit your comments by only one method. Comments received by means other than those listed above or that are received after the comment period has closed will not be reviewed. The Department will post all comments received on *http://www.regulations.gov* without making any change to the comments, including any personal information provided. The *http://www.regulations.gov* Web site is the Federal e-rulemaking portal and all comments posted there are available and accessible to the public. The Department cautions commenters not to include their personal information such as Social Security Numbers, personal addresses, telephone numbers, and e-mail addresses in their comments as such submitted information will become viewable by the public on the *http://www.regulations.gov* Web site. It is the commenter's responsibility to safeguard his or her information. Comments submitted through *http://www.regulations.gov* will not include the commenter's e-mail address unless the commenter chooses to include that information as part of his or her comment.

Postal delivery in Washington, DC, may be delayed due to security concerns. Therefore, the Department encourages the public to submit comments through the *http://www.regulations.gov* Web site.

Docket: For access to the docket to read background documents or comments received, go the Federal eRulemaking portal at *http://www.regulations.gov.* The Department will also make all the comments it receives available for public inspection during normal business hours at the Employment and Training Administration (ETA) Office of Policy Development and Research at the above address. If you need assistance to review the comments, the Department will provide you with appropriate aids such as readers or print magnifiers. The Department will make copies of the rule available, upon request, in large print and as an electronic file on computer disk. The Department will consider providing the proposed rule in other formats upon request. To schedule an appointment to review the comments and/or obtain the rule in an alternate format, contact the Office of Policy Development and Research at (202) 693–3700 (VOICE) (this is not a toll-free number) or 1–877–889–5627 (TTY/TDD).

FOR FURTHER INFORMATION CONTACT: William L. Carlson, PhD, Administrator, Office of Foreign Labor Certification, ETA, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–4312, Washington, DC 20210; Telephone (202) 693–3010 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Revisions to 20 CFR 655.10

A. Statutory Standard With Respect to Prevailing Wages and Current Department of Labor Regulations

As provided by section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act (INA or Act) (8 U.S.C. 1101(a)(15)(H)(ii)(b)), the H–2B visa classification for non-agricultural temporary workers is available to a foreign worker "having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform other [than agricultural] temporary service or labor if unemployed persons capable of performing such service or labor cannot be found in this country." There is an annual cap of 66,000 H–2B nonimmigrant visa approvals per fiscal year, divided into two biannual allocations of 33,000 each.

Section 214(c)(1) of the INA requires DHS to consult with appropriate agencies before approving an H–2B visa petition. 8 U.S.C. 1184(c)(1). The regulations for U.S. Citizenship and Immigration Services (USCIS), the agency within DHS which adjudicates requests for H–2B status, require that an intending employer first apply for a temporary labor certification from the Secretary of Labor (the Secretary). 8 CFR 214.2(h)(6). That certification informs USCIS that U.S. workers capable of performing the services or labor are not available, and that the employment of the foreign worker(s) will not adversely affect the wages and working conditions of similarly employed U.S. workers. A certification from the Secretary is currently not required for H–2B employment on Guam, for which certification from the Governor of Guam is required. 8 CFR 214.2(h)(6)(iii).

The Department's regulations at 20 CFR part 655, Subpart A, "Labor Certification Process for Temporary Employment in Occupations other than Agriculture or Registered Nursing in the United States (H–2B Workers)," govern the H–2B labor certification process, as well as the enforcement process to ensure U.S and H–2B workers are employed in compliance with H–2B labor certification requirements. Applications for labor certification are processed by the Office of Foreign Labor Certification (OFLC) in ETA, the agency to which the Secretary has delegated her responsibilities described in the USCIS H–2B regulations. Enforcement of the attestations made by employers in H–2B applications for labor certification is conducted by the Wage and Hour

Division (WHD) within DOL, to which DHS on January 16, 2009 delegated enforcement authority granted to it by the INA. 8 U.S.C. 1184(c)(14)(B).

As a part of the process of applying to employ H–2B workers, an employer must ensure that it will pay the workers hired in connection with that application a wage that will not adversely affect the wages of U.S. workers similarly employed. To ensure that this requirement is met, the Department has established a process for providing to an employer a prevailing wage for the job opportunity, below which an employer may not pay its H–2B workers. Until 2005, the process of determining prevailing wages was governed by General Administration Letter (GAL) No. 2–98 (1998). The process required by the 1998 GAL made use of wage rates determined under the Davis-Bacon Act (DBA), 40 U.S.C. 276a *et seq.,* 29 CFR part 1, or the McNamara-O'Hara Service Contract Act (SCA), 41 U.S.C. 351 *et seq.,* wage rates mandatory for H–2B occupations for which such wage determinations existed. In the absence of DBA or SCA wage rates, prevailing wage determinations were based on the Occupational Employment Statistics wage survey (OES), compiled by the Bureau of Labor Statistics (BLS). In May 2005, as a result of legislation enacting section 212(p)(4) of the INA, 8 U.S.C. 1182(p)(4), relating to the H–1B visa program, the Department issued guidance on prevailing wage determinations. The Department applied that guidance to H–2B labor certification applications as well as the H–1B temporary specialty worker and permanent labor certification programs. Under that guidance, prevailing wage determinations in these three visa programs were set based on four tiers tied to skill levels using the OES wage survey, while the use of DBA or SCA wage rates was at the option of the employer seeking the determination. The Department did not use notice and comment rulemaking when issuing that guidance. See ETA Prevailing Wage Determination Policy Guidance, Non-agricultural Immigration Programs (the Prevailing Wage Guidance), *http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.*

In 2008, the Department proposed and finalized regulations that currently govern the H–2B temporary worker program. 73 FR 29942, May 22, 2008; 73 FR 78020, Dec. 19, 2008 (the 2008 Final Rule). The 2008 Final Rule essentially codified various aspects of the 2005 prevailing wage guidance, including that the prevailing wage for labor certification purposes shall be the arithmetic mean of the wages of workers similarly employed at the skill level in the area of employment. 20 CFR 655.10(b)(2). Additionally, the 2008 Final Rule, in accordance with the 2005 prevailing wage guidance, continued to require the use of the OES Survey in setting the prevailing wage, in the absence of a collective bargaining agreement, an employer-provided survey acceptable under 20 CFR 655.10(f), or a request from the employer to use the DBA or SCA wage determinations. The 2008 Final Rule also transferred the process of determining prevailing wages from the State Workforce Agencies (SWAs) to OFLC but did not change the method for calculating the wages for H–2B workers and U.S. workers. The activity of calculating and issuing prevailing wage determinations (PWDs) based upon requests from employers seeking to use them in connection with a foreign labor certification program is now conducted by OFLC's National Prevailing Wage Center (NPWC), previously named the National Prevailing Wage and Helpdesk Center, in Washington, DC; it is designated in the regulation by the generic National Processing Center, or NPC.

B. The Need for New Rulemaking

Because the 2008 Final Rule did not make any changes in the method by which wages for H–2B workers and U.S. workers are calculated and continued the four-tiered skill system, the Department did not seek comment in the rulemaking process on the sources of data used to set wage rates. Since the 2008 Final Rule took effect, however, the Department has grown increasingly concerned that the current calculation method does not adequately reflect the appropriate wage necessary to ensure U.S. workers are not adversely affected by the employment of H–2B workers. Additionally, the prevailing wage calculation methodology became the subject of litigation. On August 30, 2010, the U.S. District Court in the Eastern District of Pennsylvania in *Comité de Apoyo a los Trabajadores Agricolas (CATA)* v. *Solis,* Civil No. 2:09–cv–240–LP, 2010 WL 3431761 (E.D. Pa. Aug. 30, 2010), ordered the Department to "promulgate new rules concerning the calculation of the prevailing wage rate in the H–2B program that are in compliance with the Administrative Procedure Act no later than 120 days from the date of this order." The plaintiffs in *CATA* had challenged the Department's use of skill levels in establishing prevailing wages and the Department's reliance upon OES data in lieu of DBA and SCA rates. The court ruled that the Department had violated the Administrative Procedure Act when it did not adequately explain its reasoning for using skill levels as part of the H–2B prevailing wage determinations, and that it failed to consider comments relating to the choice of appropriate data sets in deciding to rely on OES data rather than DBA and SCA in setting the prevailing wage rates.

Accordingly, in order to comply with the Court's order and to appropriately establish a wage methodology that adequately protects U.S. and H–2B workers, the Department is engaging in this new rulemaking to provide the public with notice and opportunity to comment on a new proposed methodology to determine prevailing wages under the H–2B program. The Department anticipates further rulemaking that will address other aspects of the H–2B temporary worker program.

C. § 655.10 Prevailing Wage

The proposed rule would establish that the prevailing wage will be the highest of the following: Wages established under an agreed-upon collective bargaining agreement (CBA); a wage rate established under the DBA or SCA for that occupation in the area of intended employment; and the arithmetic mean wage rate established by the OES for that occupation in the area of intended employment. The employer would be required to pay the workers at least the highest of the prevailing wage as determined by the NPC, the Federal minimum wage, the State minimum wage and the local minimum wage.

The NPRM proposes to include consideration of the use of DBA wages and SCA wages for those occupations for which wages have been determined under either of the two Acts for the area of intended employment. The WHD's DBA survey program has undergone a significant re-engineering effort in the last 7 years, resulting in a greatly improved and timely prevailing wage rate determination process. The wage determinations are maintained by type of public construction project (*e.g.,* residential, building, highway, and heavy), and they are issued on a county-by-county basis. In addition, they include more detail for crafts (*e.g.,* they distinguish between rates paid to a pipefitter who performs HVAC work and one who does not). Presently, SCA wage determinations are based upon BLS' National Compensation Survey and OES survey data, and in some cases Federal employee data is also used. SCA

wage determinations now are reviewed yearly. Therefore, the Department has revisited the issue of whether to require the consideration of these alternative prevailing wage rate sources and has concluded that process improvements have made these wage surveys appropriate for use in this program. During its long practice of making wage determinations under these statutes, the Department has invested significant time and resources in developing appropriate calculation methodologies and making decisions about appropriate sources of wage data which it must consider in order to preserve wage integrity for U.S. workers.

The Department has concluded that the mandatory consideration of the DBA and/or SCA wages for purposes of PWDs will address several important policy objectives, including protecting U.S. worker wages. First, it will ensure that each PWD reflects the highest wage from the most accurate and diverse pool of government wage data available with respect to a job classification and area of intended employment. Second, it will ensure compliance with mandatory wage standards for certain occupations. In addition, many of the H–2B job classifications already have DBA or SCA wages associated with the occupations; therefore, reinstating the explicit use of these wages can prevent the undercutting of wages in the local market when they more accurately reflect local market wages.

Furthermore, the proposed rule would eliminate the use of the four-tiered wage structure. The Department currently implements this four-tiered system in accordance with the 2005 Prevailing Wage Guidance. This guidance differentiates the wage tiers by the level of experience, education, and supervision required to perform the job duties, as required for H–1B wages by section 212(p)(4) of the INA, from which the four-tiered wage system is derived. For the reasons stated below, the Department proposes to amend the current four-tier practice for the H–2B program and proposes instead a single OES wage level for H–2B job opportunities based on the arithmetic mean of the OES wage data for the job opportunities in the area of intended employment.

The Department has re-examined section 212(p)(4) of the INA and has concluded that the use of the skill levels mandated in that provision is not legally required in the H–2B program. Section 212(p)(4) of the INA was enacted in the context of H–1B reform in the Consolidated Appropriations Act of 2005, and while it is the only paragraph in section 212(p) that does not reference any specific immigration programs to which it applies, it is embedded in the provisions dealing with prevailing wages for positions in the H–1B and permanent foreign labor categories. There is no legislative history indicating that it was or was not meant to apply only to the H–1B program. However, the other provisions of section 212(p), which were all added to the INA by Congress at the same time, all are specific in their application to H–1B, to the permanent program, or to both. None applies to the H–2B program.[1] Thus, the Department no longer believes that it is bound by section 212(p)(4) to offer four-tiered wage levels in the H–2B program. The Department has already eliminated the four-tiered wage levels in the H–2A program in its Final Rule on that program. 75 FR 6884 (Feb. 12, 2010).

The wage-setting procedures no longer require a single wage determining methodology as a matter of administrative efficiency, which was a concern at the time of issuance of the 2005 Prevailing Wage Guidance. The Department, which had used a two-tiered wage system in its foreign labor certification programs before the enactment of section 212(p), implemented the four tiers in H–2B for administrative efficiency when it implemented them in the H–1B and permanent labor certification programs. At that time, the SWAs were responsible for providing all wage determinations. Training diverse State workforce staff around the country on multiple wage methodologies for different wage determination processes in foreign labor certification programs would have been difficult and would have inevitably resulted in inconsistent application and confusion, which is counterproductive to the Department's mandate to ensure that H–2B employers do not offer wages that will adversely impact the wages of U.S. workers. However, the Department completed consolidation of its wage determination activities for its foreign labor programs in the NPWC in January 2010. The use of a single Center to issue wage determinations ensures that wage calculations are applied consistently throughout a single program, thereby eliminating the need to use a single method of calculation for all programs for administrative efficiency. Indeed, as noted above, the Department already has stopped using the four-tiered system in the H–2A program as of the effective date of the H–2A Final Rule. 75 FR 6884 (Feb. 12, 2010).

The types of jobs found in the H–2B program involve few if any skill differentials necessitating tiered wage levels. The Department has an obligation to require H–2B employers to offer wages that do not adversely affect the wages of their U.S. workforce. By their very existence, however, multiple wage rates, particularly in a program in which most job opportunities have few or no skill requirements, stratify wages and inappropriately allow employers to force much of the wage-earning workforce into a lower wage. H–2B workers, most of whom fill jobs with low skill levels, are more likely to be classified at the low end of the wage tiers, ultimately adversely affecting the wages of U.S. workers in those same jobs. In addition, even if skill-based wage tiers were desirable as a theoretical matter, neither the OES nor any other comprehensive data series that we are aware of attempts to capture such variations. While the Department has, since 1998, created tiered wages by mathematically manipulating OES data in accordance with the statute, the actual OES survey instrument does not solicit data concerning the skill level of the workers whose wages are being reported. While the assumption that lower wages reflect lower skills (the basis for the current methodology) may have some validity in higher skilled occupations, there is no support for that assumption in the case of the lower-skilled occupations that predominate in the H–2B program.

H–2B disclosure data from the last 10 years demonstrates that many jobs for which employers seek H–2B workers—housekeepers, landscape workers, etc.—clearly require minimal skill to perform, have few special skill or experience requirements, and do not generally have career ladders. These jobs have typically resulted in a Level 1 (the lowest wage level) determination for the H–2B employer, because the jobs themselves do not require the employer to seek workers with higher skill levels. The result is a wage determination that is in fact lower than the average wage paid for many jobs that are of the same classification as those jobs filled under the H–2B program.[2] By allowing jobs to be filled by H–2B workers at these lower wages, a tiered wage system can have a

[1] Additionally, the decision issued by the court in *Comité de Apoyo a los Trabajadores Agricolas (CATA)* v. *Solis,* 2010 WL 3431761, at *19 n.22, which invalidated the application of the four-tier wage skill levels to the H–2B program, found that section 212(p)(4) of the INA is limited to the H–1B context (if the Department argued that it was "using skill levels because of the statute, that explanation would be irrational").

[2] DOL analysis shows that, in about 96 percent of the cases, the H–2B wage is lower than the mean of the OES wage rates for the same occupation. See footnote 6.

depressive effect on wages of similar domestic workers, ultimately adversely affecting the wages of U.S. workers in those same jobs.[3] The Department cannot continue to allow such wage depression where its mandate is to ensure that the wages of U.S. workers suffer no adverse impact.

The Department, accordingly, proposes to require that the arithmetic mean of the OES wage rates be the basis for determining the OES component of the prevailing wage rate in the H–2B program as it is the most effective available method for preventing adverse effect on wages. The Department welcomes comment on specific alternatives for wage calculations to meet its mandate for avoiding adverse effect on wages while ensuring that wages reflect economic realities in the marketplace for such jobs.

Finally, the H–2B regulations currently allow the use of an employer-provided survey to determine the prevailing wage when that survey meets certain methodological requirements, even if the survey produces a lower wage than the OES wage. The NPRM proposes to eliminate the use of private wage surveys in the H–2B program. After more than 10 years of successful experience with the OES, the Department has concluded that the review of such surveys is an inefficient and unnecessary expenditure of government resources. While private surveys can provide useful information, the cost of reviewing the surveys outweighs their utility.

By eliminating the use of such employer-provided surveys, the proposed rule also eliminates the need for the 2008 Final Rule provision allowing employers to file supplemental information regarding the use of a survey, rendering current section 655.10(g) at least partially moot. The section also references the submission of supplemental information when there is a disagreement with a wage level, which has also been rendered moot. As any other issue (such as the application of a DBA or SCA wage) can be appealed through the review of a PWD by the Certifying Officer or by BALCA through the procedures of section 655.11, the Department is removing paragraphs 655.10(f) and (g) of the current rule.

[3] Absent an increase in the number of workers under the H–2B program to fill the temporary labor shortage, wages for these temporary jobs would rise in order to dispel the shortage, until sufficient additional domestic labor is attracted into the market. These wage increases are avoided, however, under the prevailing wage requirements of the H–2B program as currently configured. Moreover, when H–2B wages are set lower than wages paid to U.S. workers in similar jobs, as they generally are under the tiered wage system, the H–2B wages may not actually reflect the economic value of the work, impeding any upward pressure on wages that would otherwise result from the labor shortage.

II. Administrative Information

A. Executive Order 12866

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

The Office of Management and Budget (OMB) has determined that this NPRM is an economically significant regulatory action under sec. 3(f)(1) of E.O. 12866. This regulation would likely result in transfers in excess of $100 million annually and consequently is economically significant. Accordingly, OMB has reviewed this NPRM.

1. Need for Regulation

The Department has determined for a variety of reasons that a new rulemaking effort is necessary for the H–2B program with respect to the wages paid to these workers. Chief among these reasons is the United States District Court for the Eastern District of Pennsylvania's order and accompanying opinion in *Comité de Apoyo a los Trabajadores Agricolas (CATA)* v. *Solis,* Civil No. 2:09–cv–240–LP, 2010 WL 3431761 (E.D. Pa. Aug. 30, 2010), which invalidated the application of the four-tier wage skill levels to the H–2B program and required the Department to "promulgate new rules concerning the calculation of the prevailing wage rate in the H–2B program that are in compliance with the Administrative Procedure Act no later than 120 days from the date of this order." The Department is concerned that the methodology for calculating prevailing wages at issue in the Court's order does not adequately reflect the appropriate wage necessary to ensure U.S. workers are not adversely affected by the employment of H–2B workers.

For these reasons, discussed in more detail above, the Department is proposing the changes contained in the NPRM.

2. Alternatives

Given the fact that the court's order and accompanying opinion in *Comité de Apoyo a los Trabajadores Agricolas (CATA)* v. *Solis,* Civil No. 2:09–cv–240–LP, requires the Department to promulgate this NPRM, the Department has limited its consideration of alternatives of wage calculations to the following: (1) To continue the current calculation methodology but provide a more complete justification for doing so, and (2) to eliminate the four tiers and use the arithmetic mean. For use of alternative government sources, the Department considered continuing (1) the optional use of DBA and SCA and (2) making the use of such surveys mandatory. For alternative wage sources, the Department considered, in addition to the continued use of CBAs, (1) continuing the use of private employer surveys and (2) elimination of private surveys.

The Department considered alternate data sources but given the time constraints imposed by the court's order, we were unable to fully analyze these alternatives. We welcome comments from the public on alternatives for wage sources that provide adequate protections to U.S. and H–2B workers.

The alternatives proposed in this NPRM are those that will best achieve the Department's policy objectives of ensuring that wages of U.S. workers are more adequately protected and, thus, that employers are only permitted to bring H–2B workers into the country where the wages and working conditions of U.S. workers will not be adversely affected. We request comments from the public on alternatives for calculating a prevailing wage that provides adequate protections to U.S. and H–2B workers.

3. Economic Analysis

The Department's analysis below considers the expected impacts of the proposed NPRM provisions against the baseline (*i.e.,* the 2008 Final Rule). The method of determining prevailing wages represents additional compensation for both H–2B and U.S. workers hired in response to the required recruitment.

The relevant benefits, costs, and transfers that may apply are discussed.[4]

The NPRM proposes to require employers to offer H–2B workers and U.S. workers hired in response to the recruitment required as part of the application a wage that is at least equal to the highest of the prevailing wage, or the Federal, State or local minimum wage. The prevailing wage is the highest of the following: (1) The wage rate set forth in the CBA, if the job opportunity is covered by a CBA that was negotiated at arms' length between the union and the employer; (2) the wage rate established under the Davis-Bacon Act or the McNamara-O'Hara Service Contract Act for the occupation in the area of intended employment, if the job opportunity is in an occupation for which such a wage rate has been determined; and (3) the arithmetic mean of the OES-reported wage.

To estimate the proposed hourly change in wages, the Department collected H–2B program participation data for fiscal year (FY) 2009. We then matched the OES wage rates to the H–2B data for the same period by standard occupational code (SOC). Using all certified or partially certified applications in the H–2B program data, we calculated the increase in wages by subtracting the average H–2B hourly wage certified from the average OES average hourly wage, and we weighted this differential by the number of certified workers on each certified or partially certified application.[5] We then summed those products and divided the sum by the total number of certified workers of all certified or partially certified applications.[6] Based on this calculation, the proposed change in the method of determining wages will result in a $4.38 increase in the weighted average hourly wage for H–2B workers and similarly employed U.S. workers hired in response to the recruitment required as part of the application.[7]

The Department provides an assessment of transfer payments associated with increases in wages resulting from the change in the wage determination method. Transfer payments, as defined by OMB Circular A–4, are payments from one group to another that do not affect total resources available to society. Transfer payments are associated with a distributional effect, but do not result in additional benefits or costs to society. The primary recipients of transfer payments reflected in this analysis are H–2B workers and any U.S. workers hired in response to the required recruitment under the H–2B program. The primary payors of transfer payments reflected in this analysis will be H–2B employers, and under the proposed higher wages in the NPRM, those employers who choose to continue to participate are likely to be those that have the greatest need to access the H–2B program. When summarizing the benefits or costs of specific provisions of this proposed rule, we present the 10-year averages to reflect the typical annual effect.

Employment in the H–2B program represents a very small fraction of the total employment in the U.S. economy, both overall and in the industries represented in the program. The H–2B program is capped at 66,000 visas issued per year (33,000 of which are made available biannually), which represents approximately 0.05 percent of total nonfarm employment in the U.S. economy (130.9 million).[8] According to H–2B program data for FY 2007–2009, the average annual numbers of H–2B workers certified in the top five industries were as follows: Construction—30,242; Amusement, Gambling, and Recreation—14,041; Landscaping Services—78,027; Janitorial Services—30,902; and Food Services and Drinking Places—22,948. These employment numbers represent the following percentages of the total employment in each of these industries: Construction—0.4 percent (30,242/7,265,648); Amusement, Gambling, and Recreation—0.9 percent (14,041/1,506,120); Landscaping Services—13.2 percent (78,027/589,698); Janitorial Services—3.3 percent (30,902/933,245); and Food Services and Drinking Places—0.2 percent (22,948/9,617,597).[9] These percentages decrease further when scaled to the actual number of entries permitted each year: Construction—0.2 percent (14,756/7,265,648); Amusement, Gambling, and Recreation—0.5 percent (6,851/1,506,120); Landscaping Services—6.5 percent (38,073/589,698); Janitorial Services—1.6 percent (15,079/933,245); and Food Services and Drinking Places—0.1 percent (11,197/9,617,597).[10] As these data illustrate, the H–2B program represents a small fraction of the total employment even in each of the top five industries in which H–2B workers are found—less than 1 percent in most of the categories.

i. Costs

In standard economic models of labor supply and demand, an increase in the wage rate represents an increased production cost to employers leading to a reduction in the demand for labor. Because production costs increase with an increase in the wage rate, a resulting decrease in profits is possible for H–2B employers that are unable to increase prices to cover the cost increase. Some H–2B employers, however, can be expected to offset the cost increase by increasing the price of their products or services. In addition, workers who would have been hired at a lower wage rate are not hired at the higher wage rate, resulting in forgone earnings for workers. In this theoretical sense, to the extent that the higher wages imposed by the rule result in lower employment and lower output by firms employing those workers, the lost profits on the foregone output and the lost net wages to the foregone workers represent a deadweight loss because these gains from trade are not attained. This effect will be magnified during years in which the cap is not reached.[11]

[4] For the purpose of this analysis, H–2B workers are considered temporary residents of the U.S.

[5] A total of 30 applications were set aside due to invalid data.

[6] To perform this calculation, we assume that the weighted average wage of H–2B workers has the same distribution as the weighted average wage of the domestic workers. This may or may not be the case. While there is some uncertainty regarding this approach, it is the best methodology that can be applied given the available data. In about 4.1 percent of cases, the H–2B hourly wage was higher than the OES wage; it is likely that, instead of declining, those wages would not change as a result of the rule, so in such cases, the wage differential was assumed to be zero.

[7] The Department does not believe the imposition of these wages will cause increases in the wage beyond that represented by the OES arithmetic mean. A CBA wage may in fact be the highest of the applicable wages; even under the 2008 Final Rule, if the job opportunity were covered by a CBA, the wage rate set forth in the CBA would be the required wage. Accordingly, including the wage rate set forth in the CBA among the definition of prevailing wage will not result in an increased cost to the employer. As for the application of SCA and DBA to the PWD, in most cases, the SCA wage should not result in an increased cost to employers because in most cases, the SCA wage is based upon the OES mean. The application of DBA wages, and their potential impact on the relative wage increase, cannot be determined at this time, because the situations in which DBA would be higher than the location-specific OES arithmetic mean cannot be determined with sufficient accuracy to permit calculation. As a result, this analysis assumes that the OES wage will represent the highest of the three alternatives.

[8] Source for total employment: *ftp://ftp.bls.gov/pub/suppl/empsit.ceseeb1.txt.*

[9] Source for total employment by industry: 2007 Economic Census.

[10] The number of visas available under the H–2B program is 66,000, assuming no statutory increases in the number of visas available for entry in a given year. We also assume that half of all such workers (33,000) in any year stay at least one additional year, and half of those workers (16,500) will stay a third year, for a total of 115,500 H–2B workers in a given year. The scale factor was derived by dividing 115,500 by the total number of workers certified per year on average during FY2007–2009 (236,706).

[11] The output reduction impact of reducing labor demand may be partially offset by capital

In a practical sense, because the total employment under the H–2B program is capped at 66,000 visas, the macroeconomic effect of reductions in H–2B employment and therefore reductions in output is expected to be minimal. There has generally been excess demand for H–2B workers well beyond the 66,000 limit, and DOL believes that the increased wages resulting from the proposed rule will not result in fewer than 66,000 visas for H–2B workers because, even if some employers decide not to participate in the H–2B program, other employers who previously had unfilled positions will participate.

For example, for the years FY2007 through 2009, employers applied for an average of 236,706 certified H–2B positions per year. This number reflects the number of positions certified, rather than the number of actual workers who entered to take up those positions, which is capped at 66,000 per year. Using this number of certified workers to represent the quantity of labor demanded, and assuming an elasticity of labor demand of −0.3,[12] a $4.38 (51 percent) increase in wages would result in a 15 percent decline in the number of H–2B workers requested by employers, for a remaining total of 201,200 H–2B certified positions requested by employers, which still far exceeds the 66,000 maximum visas allowed under the H–2B program. Therefore, any loss of production resulting from some employers dropping out of the program will be offset by production by other employers that would then be able to employ H–2B workers. Thus, DOL believes that for years in which the number of applications exceeds the number available under the cap, there will be no deadweight loss in the market for H–2B workers even if some employers do not participate in the program as a result of the higher H–2B wages.[13] Indeed, the higher wages expected to result from the proposed rule could in turn result in a more efficient distribution of H–2B visas to employers who can less easily employ U.S. workers. DOL believes that those employers who can more easily attract U.S. workers will be dissuaded from attempting to participate in the H–2B program after the proposed rule changes, so that those employers participating in the H–2B program after the proposed rule will have a greater need for the program, on average, than those employers participating in the H–2B program before the proposed changes.

In years in which the number of certified H–2B positions is less than the 66,000 visa cap, the higher proposed wages resulting from this NPRM could be expected to result in a reduction in employment of H–2B workers and therefore a reduction in output by employers participating in the H–2B program. This employment reduction would be expected to be partially offset by increased employment of U.S. workers to the extent that employers could attract U.S. workers (by offering higher wages, for example) or could make other adjustments, such as substituting capital for labor, but, in a theoretical sense, the reduction in employment and output would not be completely offset, potentially resulting in some deadweight loss in production among H–2B employers. However, the history of the H–2B program suggests that this situation is rare. In recent history, the number of H–2B visas has reached the 66,000 cap every year except 2009.

ii. Transfers

The proposed change in the method of determining wages results in transfers from H–2B workers to U.S. workers and from U.S. employers to both U.S. workers and H–2B workers.

A transfer from H–2B workers to U.S. workers arises because, as recruitment wages for U.S. workers increase, a larger number of U.S. workers may be attracted to work in jobs that would otherwise be occupied by H–2B workers. Additionally, faced with higher H–2B wages, some employers may find domestic workers relatively less expensive and may choose not to participate in the H–2B program and instead employ U.S. workers. While some of these U.S. workers may be drawn from other employment, some of them would otherwise remain unemployed or out of the labor force entirely, earning no salary.

The Department, however, is not able to quantify these transfer payments with precision. Difficulty in calculating these transfer payments arises primarily from uncertainty about the number of U.S. workers currently collecting unemployment insurance benefits who will become employed as a result of this rule.

To estimate the total transfer to H–2B workers via the increased wages resulting from the new wage determination method, the Department multiplied the total number of H–2B workers (115,500, which includes both new entrants and an assumed portion of those who entered in each of the two previous years),[14] by the weighted average hourly wage increase ($4.38), the number of hours worked per day (7), and the total number of days worked (217).[15,16] We estimate the total annual average transfer incurred due to the increase in wages at $769.4 million. As a result, OMB has determined that the proposed rule is an economically significant rule.

The increase in the wage rates induces a transfer from participating employers not only to H–2B workers, but also to workers hired in response to the required recruitment. The higher wages are beneficial to U.S. workers because they enhance workers' ability to meet the cost of living and to spend money in their local communities, which has the secondary impact of increasing economic activity in the community. These are important concerns to the current Administration and a key aspect of the Department's mandate to ensure that wages of similarly employed U.S. workers are not adversely affected.

substitution and organizational substitution productivity effects. When substitution occurs, the deadweight loss will be reduced. Substitution may also involve outsourcing of production elements, which may entail a net welfare loss to the U.S. if outsourcing to a supplier overseas, but only a transfer if outsourcing to a supplier in the U.S.

[12] *See, e.g.,* Hamermesh, Daniel S., *Labor Demand,* Princeton and Chichester, U.K.: Princeton University Press, 1993.

[13] DOL believes that any decline in employment among employers participating in the H–2B program will be offset by increased employment among new employers who previously were unable to hire workers under the H–2B program. Therefore, there would be no appreciable decline in employment under the program.

[14] See note 11, which explains that the Department assumes that 50 percent of workers entering the H–2B program in one year will remain in the country the following year and that 50 percent of those will remain in the country for a third year. The Department data with regard to certified applications cannot be used to determine the actual number of H–2B workers in the country. Certifications are made without regard to the cap on the number of H–2B workers admissible each year and are not intended to indicate whether a worker actually entered the country to fill a position. Additionally, available DHS data rely on total entries of H–2B workers, which may or may not equal the admissions of H–2B workers in a given year. *See http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2009/table25d.xls.* The Department of State keeps records of visas issued but does not publicly break down these numbers based on subcategories within the H category. *http://travel.state.gov/visa/statistics/nivstats/nivstats_4582.html.*

[15] Our analysis focuses on the costs related to H–2B workers because of the lack of data on U.S. workers hired in response to recruitment conducted in connection with an H–2B application.

[16] For the number of hours worked per day, we use 7 hours as typical for an average. For the number of days worked, we assume that the employer would retain the H–2B worker for the maximum time allowed (10 months, or 304 days [10 months × 30.42 days]) and would employ the workers for 5 days per week. Thus, total number of days worked equals 217 [10 months × 30.42 days × (5/7)].

B. Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980, as amended (RFA), requires agencies to prepare regulatory flexibility analyses and make them available for public comment when proposing regulations that will have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 603. If the rule is not expected to have a significant economic impact on a substantial number of small entities, the RFA allows an agency to certify such, in lieu of preparing an analysis. *See* 5 U.S.C. 605. For the reasons explained in this section, the Department believes this NPRM is not likely to impact a substantial number of small entities and, therefore, an initial regulatory flexibility analysis is not required by the RFA. However, in the interest of transparency and to provide a full opportunity for public comment, we have prepared the following Initial Regulatory Flexibility Analysis to assess the impact of this regulation on small entities, as defined by the applicable Small Business Administration (SBA) size standards. We specifically request comments on the following burden estimates, including the number of small entities affected by the requirements, and on alternatives that could reduce the burden on small entities. The Chief Counsel for Advocacy of the Small Business Administration was notified of a draft of this proposed rule upon submission of the proposed rule to OMB under E.O. 12866, as amended, "Regulatory Planning and Review" 58 FR 51735, Oct. 4, 1993; 67 FR 9385, Feb. 28, 2002; 72 FR 2763, Jan. 23, 2007.

Because employers seeking to participate in the H–2B program are derived from virtually all segments of the economy and across industries, those participating businesses are a small portion of the national economy overall. A Guide for Government Agencies: How to Comply with the RFA, Small Business Administration, at 20 ("the substantiality of the number of businesses affected should be determined on an industry-specific basis and/or the number of small businesses overall").

Employment in the H–2B program represents a very small fraction of the total employment in the U.S. economy, both overall and in the industries represented in the H–2B program. The H–2B program is capped at 66,000 visas issued per year, which represents approximately 0.05 percent of total nonfarm employment in the U.S. economy (130.9 million).[17] According to H–2B program data for FY2007–2009, the average annual numbers of H–2B workers certified in the top five industries were as follows: Construction—30,242; Amusement, Gambling, and Recreation—14,041; Landscaping Services—78,027; Janitorial Services—30,902; and Food Services and Drinking Places—22,948. When the number of workers certified is scaled to reflect the actual number of entries permitted each year, given the H–2B visa cap of 66,000 workers, the data reflect that H–2B workers represent the following percentages of the total employment in each of these industries: Construction—0.2 percent (14,756/7,265,648); Amusement, Gambling, and Recreation—0.5 percent (6,851/1,506,120); Landscaping Services—6.5 percent (38,073/589,698); Janitorial Services—1.6 percent (15,079/933,245); and Food Services and Drinking Places—0.1 percent (11,197/9,617,597).[18] As these data illustrate, the H–2B program represents a small fraction of the total employment even in each of the top five industries in which H–2B workers are found.

1. Description of the Reasons That Action by the Agency Is Being Considered

The Department has determined for a variety of reasons that a new rulemaking effort is necessary for the H–2B program with respect to the wages paid to these workers. Chief among these reasons is the United States District Court for the Eastern District of Pennsylvania's order and accompanying opinion in *Comité de Apoyo a los Trabajadores Agricolas (CATA)* v. *Solis,* Civil No. 2:09–cv–240–LP, 2010 WL 3431761 (E.D. Pa. Aug. 30, 2010), which invalidated the application of the four-tier wage skill levels to the H–2B program and required the Department to "promulgate new rules concerning the calculation of the prevailing wage rate in the H–2B program that are in compliance with the Administrative Procedure Act no later than 120 days from the date of this order." The Department is concerned that the methodology for calculating prevailing wages at issue in the Court's order does not adequately reflect the appropriate wage necessary to ensure U.S. workers are not adversely affected by the employment of H–2B workers.

2. Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Rule

The Department has grown increasingly concerned that the current prevailing wage calculation method does not adequately reflect the appropriate wage necessary to ensure U.S. workers are not adversely affected by the employment of H–2B workers. Accordingly, the Department is proposing to establish a new wage methodology that adequately protects U.S. and H–2B workers. The legal basis for the proposed rule is the Department's authority, as delegated from DHS under its regulations at 8 CFR 214.2(h)(6), to grant temporary labor certifications under the H–2B program. Additionally, as discussed earlier, the Department is subject to an order from the United States District Court for the Eastern District of Pennsylvania to "promulgate new rules concerning the calculation of the prevailing wage rate in the H–2B program that are in compliance with the Administrative Procedure Act no later than 120 days from the date of this order." *Comité de Apoyo a los Trabajadores Agricolas (CATA)* v. *Solis,* Civil No. 2:09–cv–240–LP, 2010 WL 3431761 (E.D. Pa. Aug. 30, 2010).

3. Description of, and Where Feasible, an Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

Definition of a Small Business

A small entity is one that is independently owned and operated and that is not dominant in its field of operation. The definition of small business varies from industry to industry to properly reflect industry size differences. An agency must either use the SBA definition for a small entity or establish an alternative definition for the industry. The Department has conducted a small entity impact analysis on small businesses in the five industries with the largest number of H–2B workers and for which data were available, as mentioned above: Landscaping Services; Janitorial Services (includes housekeeping services); Food Services and Drinking Places; Amusement, Gambling, and Recreation; and Construction. These top five industries accounted for almost 75 percent of the total number of H–2B

[17] *Source: ftp://ftp.bls.gov/pub/suppl/empsit.ceseeb1.txt.*

[18] Source for total employment by industry: 2007 Economic Census. The number of visas available under the H–2B program is 66,000, assuming no statutory increases in the number of visas available for entry in a given year. We also assume that half of all such workers (33,000) in any year stay at least one additional year, and half of those workers (16,500) will stay a third year, for a total of 115,500 H–2B workers in a given year. The scale factor was derived by dividing 115,500 by the total number of workers certified per year on average during FY2007–2009 (236,706).

workers certified during FY2007–2009.[19]

One industry, Forest Services, made the initial top-five list but is not included in this analysis because the only data available for forestry also include various agriculture, fishing, and hunting activities. Relevant data for Forestry only were not available. The Department requests the public to propose possible sources of data or information on the revenues and average number of workers of a typical small Forestry firm.

We have adopted the SBA small business size standard for each of the five industries, which is a firm with annual revenues equal to or less than the following: Landscaping Services, $7 million; Janitorial Services, $16.5 million; Food Services and Drinking Places, $7 million; Amusement, Gambling, and Recreation, $7 million; and Construction, $20.7 million.[20]

The Department has used representative data because actual data regarding entity size is not uniformly collected in the H–2B program. The Department added information collection elements surrounding entity size, revenue, and number of all employees in early 2009, specifically to obtain information regarding the size and status of program participants. This would provide the Department with a little over a year of program data regarding participants' size and status. However, these data elements are not required to be provided in order for an employer to submit the *Application for Temporary Employment Certification,* and employers accordingly have the option of not providing information about their size, employee complement, and revenues without penalty in the application process. As a result, the information on the size and status of program participants that has been collected since 2009 is therefore not sufficient to provide to the Department statistically valid data to use in analyzing the actual impact on small businesses.

[19] According to H–2B program data, the average annual number of firms (of all sizes) and H–2B workers certified for these industries during FY2007–2009 were as follows: Landscaping Services, Firms—2,754, Workers—78,027; Janitorial Services, Firms—788, Workers—30,902; Food Services and Drinking Places, Firms—851, Workers—22,948; Amusement, Gambling, and Recreation, Firms—227, Workers—14,041; and Construction, Firms—860, Workers—30,242.

[20] The SBA small business size standards for construction range from $7 million (land subdivision) to $33.5 million (general building and heavy construction). However, because employers representing all types of construction businesses may apply for certification to employ H–2B workers, the Department used an average of $20.7 million as the size standard for construction.

4. Description of the Projected Reporting, Recordkeeping and Other Compliance Requirements of the Proposed Rule

The proposed rule does not impose any reporting or recordkeeping requirements.

With regard to other compliance requirements, the Department has estimated the incremental costs for small businesses from the baseline. For this proposed rule, the baseline is the 2008 Final Rule. This Initial Regulatory Flexibility Analysis reflects the incremental cost of this rule as it adds to the requirements in the 2008 Final Rule. Using available data, we have estimated the costs of the increased wages and the time required to read and review the Final Rule.

The Department receives an average of 8,717 applications annually (which is not necessarily the same as the number of applicants, because one employer may file more than one application) for the H–2B program, and the Department estimates that an average of 6,980 of those applications result in petitions for H–2B workers that are approved by DHS. Even if all 6,980 applications are filed by unique small entities, the percentage of small entities authorized to employ temporary non-agricultural workers will be less than 1 percent of the total number of small entities in these industries.[21] Based on this analysis, the Department estimates that the rule will impact less than 1 percent of the total number of small businesses. A detailed industry-by-industry analysis is provided below.

To examine the impact of this proposed rule on small entities, the Department evaluates the impact of the incremental costs on a hypothetical small entity of average size, in terms of the total number of both U.S. and foreign workers, in each industry if it were to fill 50 percent of its workforce with H–2B workers. There are no available data to estimate the breakdown of the workforce into U.S. and foreign workers. Based on Economic Census data, the total number of workers (including both U.S. and foreign workers) for this hypothetical small business is as follows: Landscaping Services, 2.3 workers; Janitorial Services, 11.3 workers; Food Services and Drinking Places, 6.3 workers; Amusement, Gambling, and Recreation, 5.0 workers; and Construction, 6.3 workers.[22]

Also using Economic Census data, we derived the annual revenues for small entities in each of the top five industries by multiplying the average number of workers by the average revenue per worker for each of the industries. The Department estimates that small businesses in the top five industries have the following annual revenues: Landscaping Services, $0.181 million; Janitorial Services, $0.336 million; Food Services and Drinking Places, $0.223 million; Amusement, Gambling, and Recreation, $0.209 million, and Construction, $0.884 million.

a. Change in the Method of Determining Wages for H–2B Workers

The Department proposes to require employers to offer H–2B workers and to any similarly employed U.S. worker hired in response to the recruitment required as part of the application a wage that is at least equal to the prevailing wage, or the Federal, State or local minimum wage, whichever is highest. The prevailing wage is the highest of the following: (1) The wage rate set forth in the CBA, if the job opportunity is covered by a CBA that was negotiated at arms' length between the union and the employer; (2) the wage rate established under the Davis-Bacon Act or the McNamara-O'Hara Service Contract Act for the occupation in the area of intended employment if the job opportunity is in an occupation for which such a wage rate has been determined; and (3) the arithmetic mean of the OES-reported wage.[23]

To estimate the proposed hourly change in wages, the Department collected H–2B program participation data for FY2009. We then matched the OES wage rates to the H–2B data for the

[21] The total number of firms classified as small entities in these industries is as follows: Landscaping Services, 63,210; Janitorial Services, 45,495; Food Services and Drinking Places, 293,373; Amusement, Gambling, and Recreation, 43,726; and Construction, 689,040.

[22] Source: 2002 County Business Patterns and 2002 Economic Census. These data do not distinguish between U.S. workers and foreign workers.

[23] The Department does not believe the imposition of these wages will cause increases in the wage beyond that represented by the OES arithmetic mean. A CBA wage may in fact be the highest of the applicable wages; even under the 2008 Final Rule, if the job opportunity were covered by a CBA, the wage rate set forth in the CBA would be the required wage. Accordingly, including the wage rate set forth in the CBA among the definition of prevailing wage will not result in an increased cost to the employer. As for the application of SCA and DBA to the PWD, in most cases, the SCA wage is equivalent to the arithmetic mean of the OES wage, and will also not result in an increased cost to employers beyond that represented by the change in the OES from the four tiers to the arithmetic mean. The application of DBA wages, and their potential impact on the relative wage increase, cannot be determined at this time. As a result, this analysis assumes that the OES wage will represent the highest of the three alternatives.

same period by SOC. Using all certified or partially certified applications in the H–2B program data, we calculated the increase in wages for each industry by subtracting the H–2B hourly wage certified from the OES average hourly wage and then estimated the average of those differences for each industry.[24]

These calculations yielded the following hourly wage increases by industry associated with this proposed rule: Landscaping services, $3.60; Janitorial Services, $3.72; Food Services and Drinking Places, $1.29; Amusement, Gambling, and Recreation, $1.37; and Construction, $10.61.[25]

To estimate the total cost to the average small entity of increased wages for H–2B workers due to the new wage determination method, the Department multiplied the average hourly increase in wages for the top five industries by the average total number of days worked by H–2B workers, the number of hours worked per day, and the average number of H–2B workers employed by small entities in each of the top five industries.[26] Our estimates of the total annual average cost incurred due to the increase in wages for the average small employer in the top five industries are as follows: Landscaping Services, $6,562 ($3.60 × 217 × 7 × 1.2); Janitorial Services, $32,209 ($3.72 × 217 × 7 × 5.7); Food Services and Drinking Places, $6,270 ($1.29 × 217 × 7 × 3.2); Amusement, Gambling, and Recreation, $5,203 ($1.37 × 217 × 7 × 2.5); and Construction, $51,573 ($10.61 × 217 × 7 × 3.2).

b. Reading and Reviewing the New Processes and Requirements

During the first year that this rule would be in effect, employers would need to learn about the new PWD. We estimate this cost for a hypothetical small entity which is interested in applying for H–2B workers by multiplying the time required to read the new rule and any educational and outreach materials that explain the wage calculation methodology under the rule by the average compensation of a human resources manager.[27] In the first year of the rule, the Department estimates that the average small business participating in the program will spend approximately 1 hour of staff time to read and review the new regulation, which amounts to approximately $61.42 ($61.42 × 1) in labor costs in the first year.[28]

c. Total Cost Burden for Small Entities

The Department's calculations indicate that for a hypothetical small entity in the top five industries that applies for one worker (representing the smallest of the small entities that hire H–2B workers), the total average annual costs of the NPRM are as follows: Landscaping Services, $5,794; Janitorial Services, $5,976; Food Services and Drinking Places, $2,281; Amusement, Gambling, and Recreation, $2,402, and Construction, $16,455. Similarly, the analogous costs for employers in the top five industries that hire the average number of H–2B workers for their respective industries are as follows: Landscaping Services, $6,638; Janitorial Services, $33,004; Food Services and Drinking Places, $6,832; Amusement, Gambling, and Recreation, $5,760, and Construction, $51,481.

The proposed rule is expected to have a significant economic impact on a hypothetical small entity that applied for enough workers to fill 50 percent of its workforce. While applying to hire H–2B workers is voluntary, and any employer (small or otherwise) may entirely avoid costs associated with the proposed changes by choosing not to apply, an employer, whether it continues to participate in the H–2B program or fills its workforce with U.S. workers, could face sizeable costs. However, increased employment opportunities for U.S. workers and higher wages for both H–2B and U.S. workers provide a broad societal benefit that in the Department's view outweighs these costs.

The small entities that have historically applied for H–2B workers, however, represent very small proportions of all small businesses. The following are the percentages of firms that were certified for H–2B workers among all small U.S. businesses in their respective industries: Landscaping Services, 2.2 percent [(2,754 × 0.50)/63,210]; Janitorial Services, 0.9 percent [(788 × 0.50)/45,595]; Food Services and Drinking Places, 0.1 percent [(851 × 0.50)/293,373]; Amusement, Gambling, and Recreation, 0.3 percent [(227 × 0.50)/43,726], and Construction, 0.1 percent [(860 × 0.50)/689,040].[29] Due to the statutory annual cap on available visas, the percentage of small entities receiving H–2B visas, to which the full cost burden would apply, would be even lower.

Therefore, the Department estimates that this proposed rule will have a net direct cost impact on a very limited number of small non-agricultural employers above the baseline of the current costs incurred by the program as it is currently implemented under the 2008 Final Rule. Accordingly, the proposed rule is not expected to impact a substantial number of small entities. The Department specifically requests comments on these burden estimates, including the number of small entities affected by this proposed change in prevailing wage methodology, and on how the final rule can reduce burden on small entities while meeting the statutory requirement that the employment of H–2B workers not adversely affect the wages and working conditions of similarly employed U.S. workers.

5. Identification of All Relevant Federal Rules That May Duplicate, Overlap or Conflict With the Proposed Rule

The Department is not aware of any relevant Federal rules that duplicate, overlap or conflict with the proposed rule.

6. Alternatives Considered as Options for Small Entities Businesses

While the Department believes this proposed regulation would not impact a substantial number of small entities, we recognize the potential impact on small businesses and have considered alternatives to minimize such impacts. The Department's mandate under the H–2B program is to set requirements for employers that wish to hire temporary foreign non-agricultural workers. Those requirements are designed to ensure that

[24] A total of 30 applications were set aside due to invalid data.

[25] These wage increases reflect the differences between the OES wages and the H–2B wages for the occupations most closely associated with each industry. This estimate may slightly understate the wage increase because cases in which the H–2B wages were higher than OES wages would bias the estimate downward; however, this occurred in only about 4.1 percent of all cases.

[26] For the number of hours worked per day, we use 7 hours as typical for an average. For the number of days worked, we assume that the employer would retain the H–2B worker for the maximum time allowed (10 months, or 304 days [10 months × 30.42 days]) and would employ the workers for 5 days per week. Thus, total number of days worked equals 217 [10 months × 30.42 days × (5/7)].

[27] The hourly compensation rate for a human resources manager is calculated by multiplying the hourly wage of $42.95 (as published by the Department's OES survey, O*NET Online) by 1.43 to account for private-sector employee benefits (*Source:* Bureau of Labor Statistics). Thus, the loaded hourly compensation rate for a human resources manager is $61.42.

[28] The number of small businesses that will read and review the Final Rule is likely to include some that will not apply for the program. There are no available data to quantify this possible effect.

[29] The source of the numerator (i.e., the number of certified H–2B employers) is H–2B program data for FY2007–2009. The source of the denominator (*i.e.,* the total number of U.S. businesses meeting the SBA small-size criteria) is the 2002 County Business Patterns and 2002 Economic Census. *http://www.census.gov/econ/susb/data/susb2002.html.* We multiply the numerator by 0.50 to reflect our assumption that 50 percent of H–2B employers are small businesses.

foreign workers are used only if qualified domestic workers are not available and that the hiring of H–2B workers will not adversely affect the wages and working conditions of similarly employed domestic workers. These regulations set those minimum standards with regard to wages. The required wage rate is a critical aspect of the H–2B program that determines whether U.S. workers' wages will be adversely affected by the admission of foreign workers. To create different and likely lower standards for one class of employers (*e.g.,* small businesses) would essentially sanction the very adverse effect that the Department is compelled to prevent.

The Department considered alternate data sources to determine prevailing wages, but given the time constraints imposed by the court's order and the absence of available data, we were unable to fully analyze these alternatives. The only available sources of information that we are aware of for setting the prevailing wage are the OES, DBA/SCA, and surveys created by private entities. The NRPM discusses the agency's proposal about how those sources should be used. It would be difficult, if not impossible, to cost out any alternative use of these sources. For example, to the Department's knowledge there is no accessible data base of acceptable private surveys that would allow us to determine the cost implications of allowing their continued use. While the Department has been unable to fully analyze other viable options for the calculation of prevailing wages for small entities, the Department invites comments on the availability, usefulness and costs of other potential, reliable data sources.

Ultimately the decision of an employer to apply for H–2B workers is a voluntary choice. That is, any individual employer can avoid the costs associated with the NPRM by not applying for H–2B workers.

C. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531) directs agencies to assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector. The proposed rule has no Federal mandate, which is defined in 2 U.S.C. 658(6) to include either a "Federal intergovernmental mandate" or a "Federal private sector mandate." A Federal mandate is any provision in a regulation that imposes an enforceable duty upon State, local, or tribal governments, or imposes a duty upon the private sector which is not voluntary. A decision by a private entity to obtain an H–2B worker is purely voluntary and is, therefore, excluded from any reporting requirement under the Act.

D. Small Business Regulatory Enforcement Fairness Act of 1996

The Department has determined that this rulemaking does not impose a significant impact on a substantial number of small entities under the RFA; therefore, the Department is not required to produce any compliance guides for small entities as mandated by the SBREFA. The Department has, however, concluded that this proposed rule is a major rule requiring review by the Congress under the SBREFA because it will likely result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local Government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

E. Executive Order 13132—Federalism

The Department has reviewed this proposed rule in accordance with E.O. 13132 regarding federalism and has determined that it does not have federalism implications. The proposed rule does not have substantial direct effects on States, on the relationship between the States, or on the distribution of power and responsibilities among the various levels of government as described by E.O. 13132. Therefore, the Department has determined that this proposed rule will not have a sufficient federalism implication to warrant the preparation of a summary impact statement.

F. Executive Order 13175—Indian Tribal Governments

This proposed rule was reviewed under the terms of E.O. 13175 and determined not to have tribal implications. The proposed rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. As a result, no tribal summary impact statement has been prepared.

G. Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681) requires the Department to assess the impact of this proposed rule on family well-being. A rule that is determined to have a negative effect on families must be supported with an adequate rationale.

The Department has assessed this proposed rule and determines that it will not have a negative effect on families.

H. Executive Order 12630—Government Actions and Interference With Constitutionally Protected Property Rights

The proposed rule is not subject to E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, because it does not involve implementation of a policy with takings implications.

I. Executive Order 12988—Civil Justice

The proposed rule has been drafted and reviewed in accordance with E.O. 12988, Civil Justice Reform, and will not unduly burden the Federal court system. The Department has developed the proposed rule to minimize litigation and provide a clear legal standard for affected conduct, and has reviewed the proposed rule carefully to eliminate drafting errors and ambiguities.

J. Plain Language

The Department drafted this NPRM in plain language.

K. Paperwork Reduction Act

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

The PRA requires all Federal agencies to analyze proposed regulations for

potential time burdens on the regulated community created by provisions within the proposed regulations that require the submission of information. These information collection (IC) requirements must be submitted to the OMB for approval. Persons are not required to respond to a collection of information unless it displays a currently valid OMB control number as required in 5 CFR 1320.11(l) or it is exempt from the PRA.

The majority of the IC requirements for the current H–2B program are approved under OMB control number 1205–0466 (which includes ETA Form 9141 and ETA Form 9142). There are no burden adjustments that need to be made to the analysis. For an additional explanation of how the Department calculated the burden hours and related costs, the PRA package for information collection OMB control number 1205–0466 may be obtained by contacting the PRA addressee shown below or at *http://www.RegInfo.gov.*

PRA Addressee: Sherril Hurd, Office of Policy Development and Research, U.S. Department of Labor, Employment & Training Administration, 200 Constitution Avenue, NW., Room N–5641, Washington, DC 20210. *Telephone:* 202–693–3700 (this is not a toll-free number).

List of Subjects in 20 CFR Part 655

Administrative practice and procedure, Employment, Employment and training, Enforcement, Foreign workers, Forest and forest products, Fraud, Health professions, Immigration, Labor, Longshore and harbor work, Migrant workers, Nonimmigrant workers, Passports and visas, Penalties, Reporting and recordkeeping requirements, Unemployment, Wages, Working conditions.

Accordingly, ETA proposes to amend 20 CFR part 655 as follows:

Title 20—Employees' Benefits

PART 655—TEMPORARY EMPLOYMENT OF FOREIGN WORKERS IN THE UNITED STATES

1. Revise the authority citation for part 655 to read as follows:

Authority: Section 655.0 issued under 8 U.S.C. 1101(a)(15)(E)(iii), 1101(a)(15)(H)(i) and (ii), 1182(m), (n) and (t), 1184(c), (g), and (j), 1188, and 1288(c) and (d); sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2102 (8 U.S.C. 1182 note); sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); sec. 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 323(c), Pub. L. 103–206, 107 Stat. 2428; sec. 412(e), Pub. L. 105–277, 112 Stat. 2681 (8 U.S.C. 1182 note); sec. 2(d), Pub. L. 106–95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); Pub. L. 109–423, 120 Stat. 2900; and 8 CFR 214.2(h)(4)(i).

Section 655.00 issued under 8 U.S.C. 1101(a)(15)(H)(ii), 1184(c), and 1188; and 8 CFR 214.2(h).

Subparts A and C issued under 8 CFR 214.2(h).

Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188; and 8 CFR 214.2(h).

Subparts D and E authority repealed.

Subparts F and G issued under 8 U.S.C. 1288(c) and (d); and sec. 323(c), Pub. L. 103–206, 107 Stat. 2428.

Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b) and (b)(1), 1182(n) and (t), and 1184(g) and (j); sec. 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 412(e), Pub. L. 105–277, 112 Stat. 2681; and 8 CFR 214.2(h).

Subparts J and K authority repealed.

Subparts L and M issued under 8 U.S.C. 1101(a)(15)(H)(i)(c) and 1182(m); sec. 2(d), Pub. L. 106–95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); Pub. L. 109–423, 120 Stat. 2900; and 8 CFR 214.2(h).

2. Amend § 655.10, by:

a. Revising paragraphs (b) introductory text, (b)(1), and (b)(2);

b. Removing paragraphs (b)(4) and (b)(5) and redesignating paragraph (b)(3) as (b)(4) and (b)(6) as (b)(5);

c. Adding a new paragraph (b)(3); and

d. Removing paragraphs (f) and (g) and redesignating paragraphs (h) as (f), and (i) as (g).

§ 655.10 Determination of prevailing wage for temporary labor certification purposes.

* * * * *

(b) *Basis for prevailing wage determinations.* The prevailing wage is the highest of the following:

(1) The wage rate set forth in the collective bargaining agreement (CBA), if the job opportunity is covered by a CBA that was negotiated at arms' length between the union and the employer;

(2) The wage rate established under the Davis-Bacon Act or the McNamara-O'Hara Service Contract Act for the occupation in the area of intended employment if the job opportunity is in an occupation for which such a wage rate has been determined; or

(3) The arithmetic mean of the wages of workers similarly employed in the occupation in the area of intended employment as determined by the OES. This computation will be based on the arithmetic mean wage of all workers in the occupation.

* * * * *

Signed in Washington this 1st day of October 2010.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2010–25142 Filed 10–4–10; 8:45 am]

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To designate the federally occupied building located at 1220 Echelon Parkway in Jackson, Mississippi, as the ''James Chaney, Andrew Goodman, Michael Schwerner, and Roy K. Moore Federal Building''. (Sept. 30, 2010; 124 Stat. 2617)

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To provide for an additional temporary extension of programs under the Small Business Act and the Small Business Investment Act of 1958, and for other purposes. (Sept. 30, 2010; 124 Stat. 2631)

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