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MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Mandatory Electronic Filing for Agencies and Attorneys at Washington Regional Office and Denver Field Office

AGENCY: Merit Systems Protection Board.

ACTION: Interim rule with request for comments.

SUMMARY: This rule informs the public that the U.S. Merit Systems Protection Board (MSPB or Board) is launching a pilot program under which the Washington Regional Office (WRO) and Denver Field Office (DEFO) will require all pleadings filed by agencies and attorneys who represent appellants in MSPB proceedings to be electronically filed (e-filed). This requirement will apply to all pleadings except those containing classified information or Sensitive Security Information (SSI) in all adjudicatory proceedings before the Board. Any agency or appellant's attorney who believes e-filing would create an undue burden may request an exemption from the administrative judge; however, requests will generally be considered only for pleadings that include scanned material, for example, not documents prepared and saved in a word processing program, and will be granted only when supported by a specific and detailed explanation, such as when the submission of a voluminous amount of scanned documents would create a hardship for a party.

DATES: This rule is effective January 11, 2012.

ADDRESSES: Send or deliver comments to the Office of Clerk of the Board, U.S. 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, U.S. 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:

1. History of MSPB's E-Filing Initiative

On February 26, 2008, MSPB issued final regulations at 5 CFR parts 1201, 1203, 1208, and 1209 governing e-filing. 73 FR 10127. Under those regulations, virtually any type of pleading can be filed electronically via MSPB's electronic filing application—e-Appeal Online. This includes the initial original appeal in matters within the Board's original and appellate jurisdiction, as well as all subsequent pleadings by the parties in such appeals. In addition to the pleadings on the merits of these appeals, e-Appeal Online can be used in subsidiary or addendum proceedings, including petitions for enforcement, motions for attorney fee awards, motions for compensatory or consequential damages, designations of representation, and notices of changes to contact information. 73 FR 10129; 5 CFR 1201.14(b). These regulations require parties and representatives who elect to e-file to follow the instructions for e-filing at MSPB's e-Appeal Online (*https://e-appeal.mspb.gov*). 5 CFR 1201.14(d).

2. Benefits of MSPB's E-Filing Initiative

E-Appeal Online is more than an application for sending and receiving pleadings in electronic form; it comprises an electronic case file of all relevant electronic documents relating to a particular appeal. This includes an online Repository of all documents issued by MSPB in a particular case, such as notices, orders, decisions, and other documents issued by MSPB to the parties, as well as pleadings filed via e-Appeal Online. Also available in the online Repository are pleadings filed at the petition for review stage of adjudication, even if filed in paper form, and some pleadings filed at the regional office level. The Repository also includes an electronic "docket sheet" that lists all documents issued by MSPB to the parties, as well as all pleadings filed by the parties, including those pleadings that are not available for viewing and downloading in electronic form. Access to appeal documents at the Repository is limited to the parties and representatives of the appeals in which they were filed.

Generally, pleadings added to the Repository are full-text searchable, including printed materials that have been converted to electronic format by scanning. This is accomplished using optical character recognition software that converts image-only electronic formats into an image-plus-text electronic format. Making case-related documents full-text searchable makes it easier for both the parties to MSPB proceedings and MSPB itself to search case files for pertinent materials.

Although e-Appeal Online has been valuable to both MSPB and its customers, some benefits can only be realized when the entire case file is available in electronic form. If only one party is e-filing, only part of the case file will generally be available to MSPB and to the parties in an appeal in electronic form. In these circumstances, both MSPB employees and the parties need access to the paper case file in order to have access to the entire record. If the entire case file were available in electronic form, neither MSPB employees nor the parties and their representatives would need to have access to the paper case file in order to do their jobs. If e-filing were mandatory for agencies and attorneys who represent appellants, scanning the remaining paper pleadings of pro se appellants who have not taken advantage of e-filing will become manageable, and the Board and the parties would be able to realize the benefits of fully electronic case files.

3. Mandatory E-Filing for WRO and DEFO

In the February 26, 2008 **Federal Register** notice, MSPB announced that it was giving serious consideration to mandating e-filing for agencies and attorneys who represent appellants in MSPB proceedings, and MSPB welcomed comments on this issue. 73 FR 10127–28.

In response to the February 26, 2008, announcement in the **Federal Register** about the possibility of mandatory e-filing for agencies and attorneys, MSPB received only one comment. The commenter acknowledged the advantages of such a rule, but identified two disadvantages: (1) Agencies would

have to upgrade their equipment to accommodate the scanning of lengthy documents, and (2) when pro se appellants do not elect to e-file, agencies would have the additional burden of preparing and submitting documents in two formats, i.e., electronic and paper. E-Mail of March 25, 2008. We have considered the comment.

As to the equipment required, we recognize that some federal agency offices may not be well-equipped to produce and upload agency files as electronic documents. However, in light of the ever-increasing affordability of high-quality scanners and related software, we believe the number of offices that would be adversely affected by such a rule would be relatively small. We note also that e-filing is already mandatory in many state and federal courts. Nevertheless, this Interim Rule takes the commenter's concern into account and provides for exemptions in appropriate circumstances.

As to the commenter's concerns about the extra work that would be entailed when appellants do not e-file, we believe those concerns are overstated. In that event, it is true that a paper copy of the agency file would have to be printed and mailed. It is not the case, however, that all of the extra work traditionally involved in assembling an agency file would still need to be done. A party that e-files a pleading that contains three or more attachments must describe and bookmark the attachments so that each attachment is listed in a table of contents and bookmarked in the electronic version. 5 CFR 1201.14(g)(3). In the assembled pleading, the table of contents will list each attachment and the page number on which it starts. This pleading can be printed and mailed as is; there would be no need for the agency to place physical tabs on the attachments, or to manually create a separate table of contents. Thus, even when the appellant is not an e-filer, we do not see a significant increase in the time required to assemble and serve the agency file. When all parties are e-filing, we believe that there will be a net savings of time associated with creating and serving the agency file electronically.

Although the MSPB announced that it was considering making e-filing mandatory for all agencies and attorneys appearing before the MSPB, this interim rule affects only parties appearing before the WRO and the DEFO. Except for pleadings filed with WRO and DEFO, whether to participate in Board proceedings as an e-filer will continue to be voluntary. We note, however, that should the pilot program in WRO and DEFO prove to be successful, the Board would consider proposing a final agency-wide rule that would make e-filing mandatory for agencies and attorneys who represent appellants.

To provide time for agencies to comply with this rule, we are setting the effective date of this new rule 90 days in the future, on January 11, 2012. This new rule will apply only to appeals filed on or after January 11, 2012.

List of Subjects in 5 CFR Part 1201

Administrative practice and procedure, Electronic filing.

Accordingly, MSPB amends 5 CFR part 1201 as set forth below:

PART 1201—[AMENDED]

■ 1. The authority citation for part 1201 continues to read as follows:

Authority: 5 U.S.C. 1204 and 7701.

■ 2. In § 1201.14, add paragraph (p) to read as follows:

§ 1201.14 Electronic filing procedures.

* * * * *

(p)(1) Except as provided in paragraphs (p)(2) and (3) of this section, all pleadings (including the initial appeal) except those containing classified information or Sensitive Security Information filed with the Washington Regional Office (WRO) and the Denver Field Office (DEFO) by agencies or attorneys must be e-filed. Agencies and attorneys in proceedings in the WRO and the DEFO must register as e-filers pursuant to paragraph (e) of this section.

(2) Agencies or attorneys who believe that e-filing would create an undue burden on their operations may request an exemption from the administrative judge for a specific appeal and/or pleading. Such a request shall include a specific and detailed explanation why e-filing would create an undue burden.

(3) Except in unusual circumstances, exemptions granted under this section shall apply only to pleadings that include scanned material. All other pleadings except those containing classified information or Sensitive Security Information must be e-filed. The administrative judge may periodically revisit the need for an exemption granted under this subsection, and revoke the exemption as appropriate.

William D. Spencer,

Clerk of the Board.

[FR Doc. 2011–26315 Filed 10–12–11; 8:45 am]

BILLING CODE 7400–01–P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 6

Adjustment of Appendices to the Dairy Tariff-Rate Import Quota Licensing Regulation for the 2011 Tariff-Rate Quota Year

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This document sets forth the revised appendices to the Dairy Tariff-Rate Import Quota Licensing Regulation for the 2011 quota year reflecting the cumulative annual transfers from Appendix 1 to Appendix 2 for certain dairy product import licenses permanently surrendered by licensees or revoked by the Licensing Authority.

DATES: *Effective Date:* October 13, 2011.

FOR FURTHER INFORMATION CONTACT: Abdelsalam El-Farra, Dairy Import Licensing Program, Import Policies and Export Reporting Division, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Stop 1021, Washington, DC 20250–1021; or by telephone at (202) 720–9439; or by e-mail at: *abdelsalam.el-farra@fas.usda.gov.*

SUPPLEMENTARY INFORMATION: The Foreign Agricultural Service, under a delegation of authority from the Secretary of Agriculture, administers the Dairy Tariff-Rate Import Quota Licensing Regulation codified at 7 CFR 6.20–6.37 that provides for the issuance of licenses to import certain dairy articles under tariff-rate quotas (TRQs) as set forth in the Harmonized Tariff Schedule of the United States. These dairy articles may only be entered into the United States at the low-tier tariff by or for the account of a person or firm to whom such licenses have been issued and only in accordance with the terms and conditions of the regulation.

Licenses are issued on a calendar year basis, and each license authorizes the license holder to import a specified quantity and type of dairy article from a specified country of origin. The Import Policies and Export Reporting Division, Foreign Agricultural Service, U.S. Department of Agriculture, issues these licenses and, in conjunction with U.S. Customs and Border Protection, U.S. Department of Homeland Security, monitors their use.

The regulation at 7 CFR 6.34(a) states: "Whenever a historical license (Appendix 1) is not issued to an applicant pursuant to the provisions of § 6.23, is permanently surrendered or is revoked by the Licensing Authority, the

amount of such license will be transferred to Appendix 2." Section 6.34(b) provides that the cumulative annual transfers will be published in the **Federal Register**. Accordingly, this document sets forth the revised Appendices for the 2011 tariff-rate quota year.

List of Subjects in 7 CFR Part 6

Agricultural commodities, Cheese, Dairy products, Imports, Reporting and recordkeeping requirements.

Issued at Washington, DC, the 22nd day of September 2011.

Ronald Lord,

Licensing Authority.

Accordingly, 7 CFR part 6 is amended as follows:

PART 6—IMPORT QUOTAS AND FEES

■ 1. The authority citation for part 6, Subpart—Dairy Tariff-Rate Import Quota Licensing continues to read as follows:

Authority: Additional U.S. Notes 6, 7, 8, 12, 14, 16–23 and 25 to Chapter 4 and General Note 15 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), Pub. L. 97–258, 96 Stat. 1051, as amended (31 U.S.C. 9701), and secs. 103 and 404, Pub. L. 103–465, 108 Stat. 4819 (19 U.S.C. 3513 and 3601).

■ 2. Appendices 1, 2 and 3 to Subpart—Dairy Tariff-Rate Import Quota Licensing are revised to read as follows:

Appendices 1–3 to Subpart—Dairy Tariff-Rate Import Quota Licensing

ARTICLES SUBJECT TO: APPENDIX 1, HISTORICAL LICENSES; APPENDIX 2, NONHISTORICAL LICENSES; AND APPENDIX 3, DESIGNATED IMPORTER LICENSES FOR QUOTA YEAR 2011

[Quantities in kilograms]

Article by additional U.S. note number and country of origin	Appendix 1	Appendix 2	Sum of Appendix 1 & 2	Appendix 3		Harmonized tariff schedule
				Tokyo R.	Uruguay R.	
NON-CHEESE ARTICLES						
BUTTER (G-NOTE 6)	5,096,498	1,880,502	6,977,000			6,977,000
EU–25	75,459	20,702	96,161			
New Zealand	110,045	40,548	150,593			
Other Countries	43,017	30,918	73,935			
Any Country	4,867,977	1,788,334	6,656,311			
DRIED SKIM MILK (K-NOTE 7)		5,261,000	5,261,000			5,261,000
Australia		600,076	600,076			
Canada		219,565	219,565			
Any Country		4,441,359	4,441,359			
DRIED WHOLE MILK (H-NOTE 8)	3,175	3,318,125	3,321,300			3,321,300
New Zealand	3,175		3,175			
Any Country		3,318,125	3,318,125			
DRIED BUTTERMILK/WHEY (M-NOTE 12)		224,981	224,981			224,981
Canada		161,161	161,161			
New Zealand		63,820	63,820			
BUTTER SUBSTITUTES CONTAINING OVER 45 PERCENT OF BUTTERFAT AND/OR BUTTER OIL (SU-NOTE 14)		6,080,500	6,080,500			6,080,500
Any Country		6,080,500	6,080,500			
TOTAL: NON-CHEESE ARTICLES	5,099,673	16,765,108	21,864,781			21,864,781
CHEESE ARTICLES						
CHEESE AND SUBSTITUTES FOR CHEESE (EXCEPT: SOFT RIPENED COW'S MILK CHEESE; CHEESE NOT CONTAINING COW'S MILK; CHEESE (EXCEPT COTTAGE CHEESE) CONTAINING 0.5 PERCENT OR LESS BY WEIGHT OF BUTTERFAT; AND, ARTICLES WITHIN THE SCOPE OF OTHER IMPORT QUOTAS PROVIDED FOR IN THIS SUBCHAPTER) (OT-NOTE 16)	21,557,089	9,912,642	31,469,731	9,661,128	7,496,000	48,626,859
Argentina	7,690		7,690	92,310		100,000
Australia	535,628	5,542	541,170	758,830	1,750,000	3,050,000
Canada	1,013,777	127,223	1,141,000			1,141,000
Costa Rica					1,550,000	1,550,000
EU–25	15,775,975	7,491,681	23,267,656	1,132,568	3,446,000	27,846,224
Of which Portugal is	65,838	63,471	129,309	223,691		353,000
Israel	79,696		79,696	593,304		673,000
Iceland	294,000		294,000	29,000		323,000
New Zealand	2,964,645	1,850,827	4,815,472	6,506,528		11,322,000
Norway	124,982	25,018	150,000			150,000
Switzerland	593,952	77,460	671,412	548,588	500,000	1,720,000
Uruguay					250,000	250,000
Other Countries	100,906	100,729	201,635			201,635

ARTICLES SUBJECT TO: APPENDIX 1, HISTORICAL LICENSES; APPENDIX 2, NONHISTORICAL LICENSES; AND APPENDIX 3, DESIGNATED IMPORTER LICENSES FOR QUOTA YEAR 2011—Continued

[Quantities in kilograms]

Article by additional U.S. note number and country of origin	Appendix 1	Appendix 2	Sum of Appendix 1 & 2	Appendix 3		Harmonized tariff schedule
				Tokyo R.	Uruguay R.	
Any Country	.....	300,000	300,000	.....	.....	300,000
BLUE-MOLD CHEESE (EXCEPT STILTON PRODUCED IN THE UNITED KINGDOM) AND CHEESE AND SUBSTITUTES FOR CHEESE CONTAINING, OR PROCESSED FROM, BLUE-MOLD CHEESE (B-NOTE 17)	2,285,946	195,055	2,481,001	.....	430,000	2,911,001
Argentina	2,000	.....	2,000	.....	.....	2,000
EU–25	2,283,946	195,054	2,479,000	.....	350,000	2,829,000
Chile	.....	.....	.....	.....	80,000	80,000
Other Countries	.....	1	1	.....	.....	1
CHEDDAR CHEESE, AND CHEESE AND SUBSTITUTES FOR CHEESE CONTAINING, OR PROCESSED FROM, CHEDDAR CHEESE (C-NOTE 18)	2,799,576	1,484,280	4,283,856	519,033	7,620,000	12,422,889
Australia	902,462	82,037	984,499	215,501	1,250,000	2,450,000
Chile	.....	.....	.....	.....	220,000	220,000
EU–25	52,404	210,596	263,000	.....	1,050,000	1,313,000
New Zealand	1,742,165	1,054,303	2,796,468	303,532	5,100,000	8,200,000
Other Countries	102,545	37,344	139,889	.....	.....	139,889
Any Country	.....	100,000	100,000	.....	.....	100,000
AMERICAN-TYPE CHEESE, INCLUDING COLBY, WASHED CURD AND GRANULAR CHEESE (BUT NOT INCLUDING CHEDDAR) AND CHEESE AND SUBSTITUTES FOR CHEESE CONTAINING OR PROCESSED FROM SUCH AMERICAN-TYPE CHEESE (A-NOTE 19)	2,711,009	454,544	3,165,553	357,003	.....	3,522,556
Australia	771,136	109,862	880,998	119,002	.....	1,000,000
EU–25	149,683	204,317	354,000	.....	.....	354,000
New Zealand	1,639,549	122,450	1,761,999	238,001	.....	2,000,000
Other Countries	150,641	17,915	168,556	.....	.....	168,556
EDAM AND GOUDA CHEESE, AND CHEESE AND SUBSTITUTES FOR CHEESE CONTAINING, OR PROCESSED FROM, EDAM AND GOUDA CHEESE (E-NOTE 20)	5,128,658	477,744	5,606,402	.....	1,210,000	6,816,402
Argentina	110,495	14,505	125,000	.....	110,000	235,000
EU–25	4,899,083	389,917	5,289,000	.....	1,100,000	6,389,000
Norway	114,318	52,682	167,000	.....	.....	167,000
Other Countries	4,762	20,640	25,402	.....	.....	25,402
ITALIAN-TYPE CHEESES, MADE FROM COW'S MILK, (ROMANO MADE FROM COW'S MILK, REGGIANO, PARMESAN, PROVOLONE, PROVOLETTI, SBRINZ, AND GOYA-NOT IN ORIGINAL LOAVES) AND CHEESE AND SUBSTITUTES FOR CHEESE CONTAINING, OR PROCESSED FROM, SUCH ITALIAN-TYPE CHEESES, WHETHER OR NOT IN ORIGINAL LOAVES (D-NOTE 21)	6,404,899	1,115,648	7,520,547	795,517	5,165,000	13,481,064
Argentina	3,913,007	212,476	4,125,483	367,517	1,890,000	6,383,000
EU–25	2,491,892	890,108	3,382,000	.....	2,025,000	5,407,000
Romania	.....	.....	.....	.....	500,000	500,000
Uruguay	.....	.....	.....	428,000	750,000	1,178,000
Other Countries	.....	13,064	13,064	.....	.....	13,064
SWISS OR EMMENTHALER CHEESE OTHER THAN WITH EYE FORMATION, GRUYERE-PROCESS CHEESE AND CHEESE AND SUBSTITUTES FOR CHEESE CONTAINING, OR PROCESSED FROM, SUCH CHEESES (GR-NOTE 22)	5,325,713	1,325,601	6,651,314	823,519	380,000	7,854,833

ARTICLES SUBJECT TO: APPENDIX 1, HISTORICAL LICENSES; APPENDIX 2, NONHISTORICAL LICENSES; AND APPENDIX 3, DESIGNATED IMPORTER LICENSES FOR QUOTA YEAR 2011—Continued

[Quantities in kilograms]

Article by additional U.S. note number and country of origin	Appendix 1	Appendix 2	Sum of Appendix 1 & 2	Appendix 3		Harmonized tariff schedule
				Tokyo R.	Uruguay R.	
EU–25	4,056,523	1,095,471	5,151,994	393,006	380,000	5,925,000
Switzerland	1,235,692	183,795	1,419,487	430,513	.....	1,850,000
Other Countries	33,498	46,335	79,833	.....	.....	79,833
CHEESE AND SUBSTITUTES FOR CHEESE, CONTAINING 0.5 PERCENT OR LESS BY WEIGHT OF BUTTERFAT (EXCEPT ARTICLES WITHIN THE SCOPE OF OTHER TARIFF-RATE QUOTAS PROVIDED FOR IN THIS SUBCHAPTER), AND MARGARINE CHEESE (LF-NOTE 23)	1,842,566	2,582,342	4,424,918	1,050,000	.....	5,474,908
EU–25	1,842,566	2,582,341	4,424,907	.....	.....	4,424,907
Israel	.....	.....	.....	50,000	.....	50,000
New Zealand	.....	.....	.....	1,000,000	.....	1,000,000
Other Countries	.....	1	1	.....	.....	1
SWISS OR EMMENTHALER CHEESE WITH EYE FORMATION (SW-NOTE 25)	15,607,214	6,690,117	22,297,331	9,557,945	2,620,000	34,475,276
Argentina	.....	9,115	9,115	70,885	.....	80,000
Australia	209,698	.....	209,698	290,302	.....	500,000
Canada	.....	.....	.....	70,000	.....	70,000
EU–25	11,186,762	5,290,066	16,476,828	4,003,172	2,420,000	22,900,000
Iceland	149,999	.....	149,999	150,001	.....	300,000
Israel	27,000	.....	27,000	.....	.....	27,000
Norway	3,187,264	468,046	3,655,310	3,227,690	.....	6,883,000
Switzerland	786,906	897,199	1,684,105	1,745,895	200,000	3,630,000
Other Countries	59,585	25,691	85,276	.....	.....	85,276
TOTAL: CHEESE ARTICLES	63,662,670	24,237,973	87,900,653	22,764,145	24,921,000	135,585,788
TOTAL: CHEESE ARTICLES & NON-CHEESE ARTICLES	68,762,343	41,003,081	.....	22,764,145	24,921,000	157,450,569

[FR Doc. 2011–26480 Filed 10–12–11; 8:45 am]
BILLING CODE 3410–10–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50 and 52

[NRC–2010–0288]

Design-Basis Hurricane and Hurricane Missiles for Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is issuing a new regulatory guide, (RG) 1.221, "Design-Basis Hurricane and Hurricane Missiles for Nuclear Power Plants." This regulatory guide provides licensees and applicants with new guidance that the staff of the NRC considers acceptable for use in selecting the design-basis hurricane and design-basis hurricane-generated missiles that a nuclear power plant should be designed to withstand to prevent undue risk to the health and safety of the public.

DATES: October 13, 2011.

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

- *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov*.
- *Federal Rulemaking Web Site:* Public comments and supporting materials related to this guide can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2010–0288.

Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

FOR FURTHER INFORMATION CONTACT: Robert Carpenter, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–251–7483 or e-mail *Robert.Carpenter@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is issuing a new guide in the agency's "Regulatory Guide" series. This series was developed to describe and make available to the public information such as methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the

staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

RG 1.221 was issued with a temporary identification as Draft Regulatory Guide, DG–1247. This regulatory guide provides licensees and applicants with new guidance that the staff of the NRC considers acceptable for use in selecting the design-basis hurricane and design-basis hurricane-generated missiles that a nuclear power plant should be designed to withstand to prevent undue risk to the health and safety of the public. This guidance applies to the contiguous United States but does not address the determination of the design-basis hurricane and hurricane missiles for sites located along the Pacific coast or in Alaska, Hawaii, or Puerto Rico; the NRC will evaluate such determinations on a case-by-case basis. This guide also does not identify the specific structures, systems, and components that should be designed to withstand the effects of the design-basis hurricane or should be protected from hurricane-generated missiles and remain functional. Nor does this guide address other externally generated hazards, such as aviation crashes, nearby accidental explosions resulting in blast overpressure levels and explosion-borne debris and missiles, and turbine missiles.

II. Further Information

In August 2010, DG–1247 was published with a public comment period of 60 days from the issuance of the guide. The public comment period closed on November 5, 2010. Electronic copies of Regulatory Guide 1.221 are available through the NRC's public Web site under "Regulatory Guides" at *http://www.nrc.gov/reading-rm/doc-collections/* and through the NRC's Agencywide Documents Access and Management System (ADAMS) at *http://www.nrc.gov/reading-rm/adams.html*, under Accession No. ML110940300. The regulatory analysis may be found in ADAMS under Accession No. ML110940303. Staff's responses to public comments on DG–1247 are available under ML110940334.

Dated at Rockville, Maryland, this 3rd day of October 2011.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2011–26420 Filed 10–12–11; 8:45 am]

BILLING CODE 7590–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 108, 120, 123, and 125

RIN 3245–AG15

Small Business Jobs Act: Implementation of Conforming and Technical Amendments

AGENCY: U.S. Small Business Administration.

ACTION: Direct final rule.

SUMMARY: This direct final rule contains various amendments conforming SBA regulations to changes made by the Small Business Jobs Act of 2010 to several SBA programs, including business lending, disaster lending, and contract bundling. This rule also makes additional conforming changes to ensure that the regulations governing certain fees payable in the business loan programs are consistent with the related statutory authority in the Small Business Act.

DATES: This rule is effective on November 28, 2011 without further action, unless significant adverse comment is received by November 14, 2011. If significant adverse comment is received, SBA will publish a timely withdrawal of the affected sections of the rule in the **Federal Register**.

ADDRESSES: You may submit comments, identified by RIN 3245–AG15, by one of the following methods: (1) Federal eRulemaking Portal: *http://www.regulations.gov;* following the instructions for submitting comments; or (2) Mail/Hand Delivery/Courier: John Russell, Office of General Counsel, 409 Third Street, SW., Mail Code 2221, Washington, DC 20416.

SBA will post all comments to this rule on *http://www.regulations.gov*. If you wish to submit confidential business information (CBI) as defined in the User Notice at *http://www.regulations.gov*, you must submit such information to U.S. Small Business Administration, John Russell, Office of General Counsel, 409 Third Street, SW., Mail Code 2221, Washington, DC 20416, or send an e-mail to *john.russell@sba.gov*. You should highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review your information and determine whether it will make the information public or not.

FOR FURTHER INFORMATION CONTACT: John C. Russell, Jr., Office of General Counsel, (202) 205–6642, e-mail: *john.russell@sba.gov*.

SUPPLEMENTARY INFORMATION: This direct final rule contains several conforming amendments to SBA regulations resulting from the Small Business Jobs Act of 2010 (SBJA), Public Law 111–240, which was enacted on September 27, 2010. SBA is making these regulatory amendments and other technical conforming changes to mirror current statutory provisions and avoid public confusion or possible misinterpretations of SBA's programs. Since these are conforming amendments, with no extraneous interpretation or other expanded materials, SBA expects no significant adverse comments. Based on that fact, SBA has decided to proceed with a direct final rule giving the public 30 days to comment. If SBA receives a significant adverse comment during the comment period, SBA will withdraw the sections of the rule receiving the significant adverse comment, and publish them in a proposed rule.

To minimize confusion to the reader, the Supplementary Information section is organized by sequential order of SBJA sections, followed by the additional changes that are not directly related to the SBJA amendments but are necessary for accuracy and consistency with the Small Business Act.

A. Small Business Jobs Act Amendments

Section 1111. Section 7(a) Business Loans

Section 1111 of the SBJA temporarily increased the maximum guarantee percentages for 7(a) business loans until January 1, 2011. These temporary changes do not need to be reflected in the regulations. Section 1111 also permanently increased the maximum guaranteed portion and maximum loan amount for 7(a) business loans. As a result of this change, section 7(a)(3) of the Small Business Act now reads: "No loan shall be made under this subsection—(A) if the total amount outstanding and committed (by participation or otherwise) to the borrower from the business loan and investment fund established by this Act would exceed $3,750,000 (or if the gross loan amount would exceed $5,000,000), except as provided for international trade loans, which have a different limit." 15 U.S.C. § 636(a)(3)(A). SBA is conforming three SBA regulations to this statutory change as follows: (1) § 120.151, What is the statutory limit for total loans to a Borrower?, to reflect that the maximum guaranteed amount is now $3,750,000 and the maximum loan amount is $5,000,000; (2) § 120.210, What percentage of a loan may SBA

guarantee?, to remove an outdated effective date of the maximum guaranty percentages; and (3) § 120.390, Revolving Credit, to reflect that the maximum guarantee and loan amount are the same under CapLines as other 7(a) business loans and to include a cross reference to § 120.151.

Section 1112. Maximum Loan Amounts Under 504 Program

Section 1112 of the SBJA amended several maximum loan amounts for the Certified Development Company Program (also known as the 504 Program). Due to these amendments, the Small Business Investment Act provision now reads: "(A) In General. Loans made by the Administration under this section shall be limited to—(i) $5,000,000 for each small business concern if the loan proceeds will not be directed toward a goal or project described in clause (ii), (iii), (iv) or (v); (ii) $5,000,000 for each small business concern if the loan proceeds will be directed toward 1 or more of the public policy goals described under section 501(d)(3); (iii) $5,500,000 for each project of a small manufacturer; (iv) $5,500,000 for each project that reduces the borrower's energy consumption by at least 10 percent; and (v) $5,500,000 for each project that generates renewable energy or renewable fuels, such as biodiesel or ethanol production." 15 U.S.C. 696(2)(A)(i–v). With respect to (iii) above, a small manufacturer, as defined in the Small Business Act, must have all of its production facilities located in the United States. 15 U.S.C. 696(2)(B). SBA is conforming § 120.931, 504 Loan Limits, to this statutory change, which substantially increases the loan limits for all 504 Program loans.

In implementing the loan limit for renewable energy or renewable fuels projects, SBA noted that 15 U.S.C. 696(2)(A)(v) was enacted at the same time as 15 U.S.C. 695(d)(3)(K), which describes one of the public policy objectives of the 504 Program as projects that achieve "plant, equipment and process upgrades of renewable energy sources such as the small-scale production of energy for individual buildings or communities consumption, commonly known as micropower, or renewable fuels producers including biodiesel and ethanol producers." It is SBA's view that the loan limit set by 15 U.S.C. 696(2)(A)(v) was intended by Congress to accord with the corresponding public policy goal set forth in 15 U.S.C. 695(d)(3)(K). Accordingly, the regulatory provision implementing the loan limit for renewable energy or renewable fuels incorporates the parameters of the more fully articulated public policy goal.

Section 1113. Maximum Loan Amounts Under Microloan Program

Section 1113 of the SBJA amended the maximum loan limits for the Microloan Program by raising the amount of a loan that a Microloan Intermediary can make to a borrower from $35,000 to $50,000, as well as the amount of a loan that the Microloan Intermediary can receive from the SBA from $3,500,000 to $5,000,000. SBA is revising seven of its regulations to conform to these statutory changes: (1) § 120.2, Description of the Business Loan Programs; (2) § 120.10, Definitions; (3) § 120.701, Definitions; (4) § 120.702, Are there limitations on who can be an Intermediary or on where an Intermediary may operate?; (5) § 120.706, What are the terms and conditions of an SBA loan to an Intermediary?; (6) § 120.707, What conditions apply to loans by Intermediaries to Microloan borrowers?; and (7) § 120.714, How are grants made to non-lending technical assistance providers (NTAP)?.

In addition, SBA is making one technical change to the regulations governing eligibility for grants to Microloan Intermediaries. The second sentence of paragraph (b)(2) of § 120.712 states: "Intermediaries may not enter into third party contracts for the provision of technical assistance to program clients." This language is inconsistent with paragraph (e) of that section, which states: "An Intermediary may use no more than 25 percent of the grant funds it receives from SBA for contracts with third parties for the latter to provide technical assistance to Microloan borrowers." Paragraph (e), which was added to § 120.712 in 2001 to implement statutory changes, reflects current SBA policy to allow Intermediaries to use up to 25 percent of grant funds for contracts with third parties. Therefore, SBA is removing the inconsistent sentence in paragraph (b)(2).

Section 1115. New Markets Venture Capital Company Investment Limitations

Section 1115 of the SBJA provides that "except to the extent approved by the Administrator, a covered New Markets Venture Capital Company may not acquire or issue commitments for securities under this title for any single enterprise in an aggregate amount equal to more than 10 percent of the sum of—(A) the regulatory capital of the covered New Markets Venture Capital Company; and (B) the total amount of leverage projected in the participation agreement of the covered New Markets Venture Capital." 15 U.S.C. 689. The SBJA defines the term "covered New Markets Venture Capital Company" as a company granted approval by the SBA Administrator on or after March 1, 2002, that has obtained financing from the Administrator. We are conforming the regulation to this statutory change by amending current SBA regulation, § 108.740, Portfolio Diversification ("overline" limitation). Based on the leverage ratio currently applicable in the New Markets Venture Capital (NMVC) program, the SBJA effectively increased the overline limit for existing NMVC companies from 20% to 25% of regulatory capital, which will allow these companies to invest a higher percentage of their capital in a single company or group of affiliated companies. SBA intends that an NMVC company's calculation of an overline limitation will retain the same adjustments to regulatory capital that are present in the current NMVC program regulations.

Section 1117. Sale of 7(a) Loans in Secondary Market

Section 1117 of the SBJA amends SBA's 7(a) loan program secondary market authority by providing: "If the amount of the guaranteed portion of any loan under section 7(a) is more than $500,000, the Administrator shall, upon request of a pool assembler, divide the loan guarantee into increments of $500,000 and 1 increment of any remaining amount less than $500,000, in order to permit the maximum amount of any loan in a pool to be not more than $500,000. Only 1 increment of any loan guarantee divided under this paragraph may be included in the same pool. Increments of loan guarantees to different borrowers that are divided under this paragraph may be included in the same pool." 15 U.S.C. 634(g)(6). SBA is revising three regulations to conform to this statutory change: § 120.600(a), Definitions; § 120.601, SBA Secondary Market; and § 120.611, Pools backing Pool Certificates. The purpose of this statutory provision is to allow participants in the secondary market, specifically pool assemblers, to split the guaranteed portion of individual 7(a) loans into increments of $500,000 and one increment of less than $500,000. SBA is in the process of revising SBA Forms 1086 and 1088, as well as the form of Individual Certificate, to reflect this new provision.

Section 1119. SBA Secondary Market Guarantee Authority

Section 1119 of the SBJA extends the authorization for the SBA Secondary Market Guarantee Program for First Lien Position 504 Loan Pools from February 17, 2011 to the date "two years after the date of the first sale of a pool of first lien 504 loans guaranteed under this section to a third-party investor". The new expiration date is, therefore, September 23, 2012. We are conforming one SBA regulation to this statutory change: § 120.1701, Program purpose.

Section 1132. Public Policy Goals

Section 1132 of the SBJA adds a new public policy goal for the Certified Development Company Program. The new public policy goal is "reduction of rates of unemployment in labor surplus areas, as such areas are determined by the Secretary of Labor." 15 U.S.C. 695(d)(3)(L). We are conforming one regulation to this statutory change: § 120.862, Other economic development objectives. This means that a project meeting this new public policy goal objective can qualify for a 504 loan in an amount up to $5,000,000. It also means that the project can be financed by the 504 loan even if the subject project does not create or retain jobs pursuant to § 120.861 provided that the CDC's overall portfolio, including the subject loan, meets or exceeds the CDC's required Job Opportunity average.

Section 1206. International Trade Finance Programs

Section 1206 of the SBJA made changes to SBA's International Trade, Export Working Capital, and Export Express Loan Programs. This direct final rule addresses the changes made by Section 1206 to these programs, except for the Export Express Loan Program, which will be the subject of a separate rulemaking incorporating the now permanent Export Express Loan Program in the regulations for the first time. SBA's International Trade Loan Program was amended by changing the maximum loan amount, so that the provision now reads: "No loan shall be made under this subsection—(B) if the total amount outstanding and committed (on a deferred basis) solely for the purposes provided in paragraph (16) to the borrower from the business loan and investment fund established by this Act would exceed $4,500,000 (or if the gross loan amount would exceed $5,000,000), of which not more than $4,000,000 may be used for working capital, supplies or financings under § 7(a)(14) for export purposes." 15 U.S.C. 636(a)(3)(B). Section 1206 also added a provision: "Participation in International Trade Loan—In an agreement to participate in a loan on a deferred basis under paragraph (16), the participation by the Administration may not exceed 90 percent." 15 U.S.C. 636(a)(2)(E). The International Trade Loan Program also was amended to allow such loans to be used to assist concerns engaged in or adversely affected by international trade to improve their competitive position "by providing working capital" and to expand the use of loan proceeds for refinancing to "include any debt that qualifies for refinancing under any other provision of this subsection." 15 U.S.C. 636(a)(16)(A)(ii–iii). The collateral required to be provided by borrowers of International Trade Loans was also changed. The law now allows for such loans to "be secured by a second lien on the property or equipment financed by the loan or on other assets of the small business concern, if the Administrator determines the lien provides adequate assurance of the payment of the loan." 15 U.S.C. 636(a)(16)(B)(ii). SBA is amending four existing regulations for the International Trade Loan program and adding one new regulation to reflect these statutory changes: (1) § 120.346, Eligiblity, to delete restrictive language regarding the use of IT loan proceeds that is no longer applicable; (2) § 120.347, Use of Proceeds, to reflect that IT loan proceeds may now be used for working capital and to refinance additional debt; (3) § 120.348, Amount of Loan and Guarantee, to reflect the new maximum loan amount and the new maximum guaranty amount for IT loans; and (4) new § 120.349, Collateral, to reflect the new collateral requirements for IT loans.

Finally, section 1206 of the SBJA amended The Export Working Capital (EWCP) Loan Program by increasing the maximum loan amount to $5,000,000 (15 U.S.C. 636(a)(14)(B)(i)) and by providing that the guaranty amount for EWCP loans shall be 90 percent (15 U.S.C. 636(a)(2)(D)). SBA is conforming § 120.340, What is the Export Working Capital Program?, to reflect the new maximum loan amount and the new required guaranty amount for EWCP loans. Additionally, SBA is conforming § 120.130, Restrictions on uses of proceeds, to reflect that SBA has statutory authority to allow EWCP loan proceeds to be used for revolving lines of credit for export purposes. 15 U.S.C. 636(a)(14)(A).

Section 1312. Leadership and Oversight

Section 1312(a) of the SBJA provides that: "Rationale for Contract Bundling—Not later than 30 days after the date on which the head of a Federal agency submits data certifications to the Administrator for Federal Procurement Policy, the head of the Federal agency shall publish on the Web site of the Federal agency a list and rationale for any bundled contract for which the Federal agency solicited bids or that was awarded by the Federal agency." 15 U.S.C. 644(q)(2)(B). SBA is conforming one regulation to this statutory change: § 125.2, Prime Contracting Assistance. The purpose of this statutory provision is to help reduce the practice of contract bundling. Requiring agencies to post a list of all bundled acquisitions and the rationale for bundling the acquisition holds the agency accountable to the public for its actions.

Section 1501. Aquaculture Business Disaster Assistance

Section 1501 of the SBJA provides SBA new authority to make certain types of disaster loans to aquaculture enterprises. Prior to this statutory change, aquaculture enterprises were ineligible for all SBA disaster loans. Section 1501 provides that SBA may provide economic injury disaster loans to aquaculture enterprises that are small businesses. SBA is conforming one regulation to this statutory change: § 123.300, Is my business eligible to apply for an economic injury disaster loan?

B. Other Technical Amendments

In addition to the SBJA amendments, SBA believes that additional changes should be made to the business loan program regulations in § 120.220, Fees that Lender Pays SBA, to conform to the statutory provisions in section 7(a)(18)(A) and section 7(a)(23)(A) of the Small Business Act. 15 U.S.C. 636(a)(18)(A) and (23)(A). First, with respect to the guarantee fees authorized by section 7(a)(18(A)(i) through (iii), SBA is amending the regulations at § 120.220(a)(1)(i) through (a)(1)(iii) to accurately reflect the limitations provided in the Small Business Act. The statutory subsections authorize the collection of guarantee fees in amounts not to exceed certain percentages of the guaranteed portion of the loan. The regulations, however, do not reflect the degree of flexibility provided in the statute; rather the regulations state that the fees are fixed at the percentages listed. Specifically, for loans that are $150,000 or less, section 7(a)(18)(a)(i) will now require the lender to pay a guarantee fee "not to exceed 2 percent" of the guaranteed portion of the loan. Similarly, section 7(a)(18)(A)(ii) will now require lenders to pay a guarantee fee "not to exceed 3 percent" of the

guaranteed portion of a loan that is more than $150,000, but not more than $700,000. Finally, under section 7(a)(18)(A)(iii) the guarantee fee to be paid by the lender is "not to exceed 3.5 percent" of the guaranteed portion of a loan that is more than $700,000.

SBA is also amending § 120.220(a)(1) to add the guarantee fee authorized by section 7(a)(18)(A)(1)(iv). This subsection provides that in addition to the fee payable under section 7(a)(18)(A)(iii), SBA must collect a "guarantee fee equal to 0.25 percent of any portion of the deferred participation share that is more than $1,000,000." This particular guarantee fee is currently being assessed on the applicable loans consistent with the statutory authority but was not previously codified in the regulations.

SBA is also amending § 120.220(f)(1) to accurately reflect the amount of the annual service fee that is authorized by section 7(a)(23)(A) of the Small Business Act. This statutory provision states in part that SBA "shall assess, collect and retain a fee not to exceed 0.55 percent per year of the outstanding participation balance of the deferred participation share of the loan * * *." However, the regulations state that this annual service fee must be equal to 0.5 percent of the outstanding balance of the guaranteed portion of each loan. The amendment in this rule will bring the regulations into conformity with the statutory authority, and obviate possible misunderstanding and confusion regarding the amount that is due annually on the service fee.

For Fiscal Year 2012, the fees authorized by § 120.220(a)(1) and § 120.220(f) are set at the maximum authorized levels. SBA will issue notices to announce any changes in these fees in the future.

Compliance With Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this direct final rule does not constitute a significant regulatory action under Executive Order 12866. This direct final rule is also not a major rule under the Congressional Review Act.

Executive Order 12988

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13132

For the purposes of Executive Order 13132, this direct final rule 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. Therefore, SBA has determined that this direct final rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act, 44 U.S.C., Ch. 35

SBA has determined that this direct final rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

Regulatory Flexibility Act, 5 U.S.C. 601–612

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, requires administrative agencies to consider the effect of their actions on small entities, including small businesses. According to the RFA, when an agency issues a rule, the agency must prepare an analysis to determine whether the impact of the rule will have a significant economic impact on a substantial number of small entities. However, the RFA allows an agency to certify a rule in lieu of preparing an analysis, if the rulemaking is not expected to have a significant impact on a substantial number of small entities. This rule only makes conforming amendments to SBA regulations to reflect recent legislation, and does not implement new agency policies. Some of these amendments will affect small entities; however SBA certifies that these amendments will not have a significant economic impact on a substantial number of such entities.

List of Subjects

13 CFR Part 108

Community development, Grant programs—business, Small businesses.

13 CFR Part 120

Community development, Exports, Loan programs—business, Small businesses.

13 CFR Part 123

Disaster assistance, Loan programs—business, Small businesses.

13 CFR Part 125

Government contracts, Government procurement, Small businesses, Technical assistance.

For the reasons stated in the preamble, the Small Business Administration amends 13 CFR parts 108, 120, 123, and 125 as follows:

PART 108—NEW MARKETS VENTURE CAPITAL ("NMVC") PROGRAM

■ 1. The authority citation for 13 CFR part 108 continues to read as follows:

Authority: 15 U.S.C. 689–689q.

■ 2. Amend § 108.740 as follows:
■ a. Revise paragraph (a) introductory text;
■ b. Redesignate paragraph (a)(2) as (a)(3); and
■ c. Add new paragraph (a)(2) to read as follows:

§ 108.740 Portfolio diversification ("overline" limitation).

(a) Without SBA's prior written approval, you may provide Financing or a Commitment to a Small Business only if the resulting amount of your aggregate outstanding Financings and Commitments to such Small Business and its Affiliates does not exceed 10 percent of the sum of:

* * * * *

(2) The total amount of leverage projected in your participation agreement with SBA; plus

* * * * *

PART 120—BUSINESS LOANS

■ 3. The authority citation for 13 CFR Part 120 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), (b)(7), (b)(14), (h), and note, 636(a), (h) and (m), 650, 687(f), 696(3), and 697(a) and (e); Public Law 111–5, 123 Stat. 115, Public Law 111–240, 124 Stat. 2504.

§ 120.2 [Amended]

■ 4. Amend § 120.2(b) by removing the number "25,000," and adding in its place the number, "$50,000."

§ 120.10 [Amended]

■ 5. Amend § 120.10 by removing the number "$25,000" from the definition of "Intermediary" and replacing it with the number "$50,000."

■ 6. Amend § 120.130 by revising paragraph (c) to read as follows:

§ 120.130 Restrictions on uses of proceeds.

* * * * *

(c) Floor plan financing or other revolving line of credit, except under § 120.340 or § 120.390;

* * * * *

§ 120.151 [Amended]

■ 7. Amend § 120.151 as follows:
■ (a) Remove the number "$1,000,000" and add in its place the number "$3,750,000"; and
■ (b) Remove the number "$2,000,000" and add in its place the number "$5,000,000".

§ 120.210 [Amended]

■ 8. Amend § 120.210 by removing the words "Effective December 21, 2000, loans" from the third sentence and adding in its place "Loans".

■ 9. Amend § 120.220 as follows:
■ a. Revise the last sentence in paragraph (a)(1), introductory text, to read as set forth below;
■ b. Revise paragraphs (a)(1)(i), (a)(1)(ii), and (a)(1)(iii), and add new paragraph (a)(1)(iv), to read as set forth below; and
■ c. Revise the first sentence of paragraph (f)(1) to read as set forth below.

§ 120.220 Fees that Lender pays SBA.

* * * * *

(a) * * * For a loan with a maturity of more than twelve (12) months, the guarantee fee is payable as follows:

(i) Not more than 2 percent of the guaranteed portion of a loan if the total amount of the loan is not more than $150,000;

(ii) Not more than 3 percent of the guaranteed portion of a loan if the total amount of the loan is more than $150,000 but not more than $700,000;

(iii) Except as provided in paragraph (a)(1)(iv) of this section, not more than 3.5 percent of the guaranteed portion of a loan if the total amount of the loan is more than $700,000; and

(iv) An additional 0.25 percent of the guaranteed portion of a loan if the total amount of the loan is more than $1,000,000.

* * * * *

(f) * * *

(1) *In general.* Except to the extent paragraph (f)(2) of this section applies, the lender shall pay SBA an annual service fee in an amount not to exceed 0.55 percent of the outstanding balance of the guaranteed portion of each loan. * * *

* * * * *

■ 10. Amend § 120.340 by adding two new sentences at the end of the paragraph to read as follows:

§ 120.340 What is the Export Working Capital Program?

* * * The maximum loan amount for any one EWCP loan is $5,000,000. EWCP loans shall receive a guaranty of 90 percent, not to exceed $4,500,000.

■ 11. Amend § 120.346 by revising paragraph (a)(3) to read as follows:

§ 120.346 Eligibility.

(a) * * *

(3) The loan will improve the applicant's competitive position.

* * * * *

■ 12. Amend § 120.347 by adding a new sentence at the end to read as follows:

§ 120.347 Use of proceeds.

* * * The Borrower may also use proceeds in the refinancing of existing indebtedness that is not structured with reasonable terms and conditions, including any debt that qualifies for refinancing under 7(a) Loan Program Requirements, and to provide working capital.

■ 13. Revise § 120.348 to read as follows:

§ 120.348 Amount of guarantee.

The maximum loan amount for any one International Trade (IT) loan is $5,000,000. IT loans may receive a maximum guaranty of 90 percent or $4,500,000, except that the maximum guaranty amount for any working capital component of an IT loan is limited to $4,000,000. To the extent that the Borrower has a separate EWCP loan or any other 7(a) loan for working capital, the guaranty amount for the other loan is counted against the $4,000,000 guaranty limit for the IT loan.

■ 14. Add new § 120.349 to read as follows:

§ 120.349 Collateral.

Each IT loan must be secured either by a first lien position or first mortgage on the property or equipment financed by the IT loan or on other assets of the Borrower, except that an IT loan may be secured by a second lien position on the property or equipment financed by the IT loan or on other assets of the Borrower, if the SBA determines the second lien position provides adequate assurance of the payment of the IT loan.

■ 15. Amend § 120.390(a) by revising the third sentence to read as follows:

§ 120.390 Revolving credit.

(a) * * * The maximum guaranteed amount and the maximum loan amount are the same under CapLines as other 7(a) loans, as stated in § 120.151.

* * * * *

■ 16. Amend § 120.600 by revising paragraph (a) to read as follows:

§ 120.600 Definitions.

(a) *Certificate* is the document the FTA issues representing either a beneficial fractional undivided interest in a Pool (Pool Certificate), or a fractional undivided interest in some or all of the guaranteed portion of an individual 7(a) guaranteed loan (Individual Certificate).

* * * * *

■ 17. Revise § 120.601 to read as follows:

§ 120.601 SBA Secondary Market.

The SBA secondary market ("Secondary Market") consists of the sale of Certificates, representing either a fractional undivided interest in some or all of the guaranteed portion of an individual 7(a) guaranteed loan or a fractional undivided interest in a Pool consisting of the SBA guaranteed portions of a number of 7(a) guaranteed loans. Transactions involving interests in Pools or the sale of individual guaranteed portions of loans are governed by the contracts entered into by the parties, SBA's Secondary Market Program Guide, and this subpart. See sections 5(f), (g), and (h) of the Small Business Act (15 U.S.C. 634(f), (g), and (h)).

■ 18. Amend § 120.611 by adding a new paragraph (c) to read as follows:

§ 120.611 Pools backing Pool Certificates.

* * * * *

(c) *Increments of guaranteed portion.* If the amount of the guaranteed portion of an individual 7(a) guaranteed loan is more than $500,000, a Pool Assembler may elect to divide the guaranteed portion into increments of $500,000 and one increment of any remaining amount less than $500,000, in order to permit the maximum amount of any guaranteed portion in a Pool to be not more than $500,000. Only one increment from a loan to a specific borrower may be included in a Pool.

§ 120.701 [Amended]

■ 19. Amend § 120.701 as follows:
■ a. Remove the word "Demonstration" from the definition of "Intermediary" in paragraph (e); and
■ b. Remove the number "$35,000" from the definition of "Microloan" in paragraph (f) and add in its place the number "$50,000."

§ 120.702 [Amended]

■ 20. Amend § 120.702 by removing the number "$35,000" in paragraph (a)(1) and adding in its place the number "$50,000.".

§ 120.706 [Amended]

■ 21. Amend § 120.706 by removing the number "$3.5 million" in paragraph (a) and adding in its place the number "$5 million."

§ 120.707 [Amended]

■ 22. Amend § 120.707 by removing the number "$35,000" each time it appears in paragraph (b) and adding in its place the number "$50,000."

■ 23. Amend § 120.712 by revising paragraph (b)(2) to read as follows:

§ 120.712 How does an intermediary get a grant to assist Microloan borrowers?

* * * * *

(b) * * *

(2) Grant monies may be used to attend training required by SBA.

* * * * *

§ 120.714 [Amended]

■ 24. Amend § 120.714 by removing the number "$35,000"in paragraph (a) and adding in its place the number "$50,000"

■ 25. Amend § 120.862 as follows:

■ a. Remove the word "or" at the end of paragraph (b)(8);

■ b. Remove the "." at the end of paragraph (b)(9) and add "; or" in its place; and

■ c. Add a new paragraph (b)(10) to read as follows:

§ 120.862 Other economic development objectives.

* * * * *

(b) * * *

(10) Reduction of rates of unemployment in labor surplus areas, as such areas are determined by the Secretary of Labor.

■ 26. Revise § 120.931 to read as follows:

§ 120.931 504 Lending limits.

504 loan amounts shall be limited to:

(a) An outstanding balance of $5,000,000 for each Borrower and its affiliates if the loan proceeds will not be directed towards a Project in paragraph (c) of this section,

(b) An outstanding balance of $5,000,000 for each Borrower and its affiliates if one or more of the public policy goals enumerated in § 120.862(b) applies to the Project; and

(c) $5,500,000 for each Project for:

(1) Small Manufacturers (NAICS Codes 31–33) with all production facilities located in the United States;

(2) Reduction of the Borrower's, or if the Borrower is an Eligible Passive Company, the Operating Company's energy consumption by at least 10%; or

(3) Plant, equipment and process upgrades of renewable energy sources such as the small-scale production of energy for individual buildings' or communities' consumption, commonly known as micropower, or renewable fuel producers including biodiesel and ethanol producers.

■ 27. Amend § 120.1701 by revising the third sentence to read as follows:

§ 120.1701 Program purpose.

* * * The Program's authorization expires on September 23, 2012 and the Administrator may guarantee not more than $3,000,000,000 of pools under this authority pursuant to section 503(c)(B)(iii) of the Recovery Act, as amended by section 1119 of the Small Business Jobs Act of 2010.

PART 123—DISASTER LOAN PROGRAM

■ 28. The authority citation for 13 CFR part 123 is revised to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 636(b), 636(d), 657n; Pub. L. 102–395, 106 Stat. 1828, 1864; and Pub. L. 103–75, 107 Stat. 739; and Pub. L. 106–50, 113 Stat. 245.

■ 29. Amend § 123.300 by removing the word "and" at the end of paragraph (c)(2); and adding a new paragraph (c)(4) to read as follows:

§ 123.300 Is my business eligible to apply for an economic injury disaster loan?

* * * * *

(c) * * *

(4) Small aquaculture enterprises.

* * * * *

PART 125—GOVERNMENT CONTRACTING PROGRAMS

■ 30. The authority citation for 13 CFR part 125 continues to read as follows:

Authority: 15 U.S.C. 632(p), (q); 634(b)(6); 637; 644 and 657(f).

■ 31. Amend § 125.2 by adding new paragraph (d)(9) to read as follows:

§ 125.2 Prime contracting assistance.

* * * * *

(d) * * *

(9) *Identifying and justifying bundled contracts.* Not later than 30 days after the date on which the head of a Federal agency submits data certifications to the Administrator for Federal Procurement Policy, the head of the Federal agency shall publish on the Web site of the Federal agency a list and rationale for any bundled contract for which the Federal agency solicited bids or that was awarded by the Federal agency.

* * * * *

Karen G. Mills,

Administrator.

[FR Doc. 2011–26236 Filed 10–12–11; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0939]

RIN 1625–AA87

Security Zone; Columbia and Willamette Rivers, Dredge Vessels Patriot and Liberty

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone within 200 yards of the Dredge Vessels Patriot and Liberty while the vessels are underway, anchored, or conducting dredging operations in the vicinity of Willamette River Mile 2 and Columbia River Mile 105. Entry into this zone is prohibited unless authorized by the Captain of the Port, Columbia River or his designated representative. The Coast Guard is establishing this temporary security zone around the vessels to provide security during operations and this will be done so by prohibiting all persons or vessels from operating within 200 yards of the vessel.

DATES: This rule is effective from October 13, 2011, through October 31, 2011. The security zone has been enforced with actual notice since from 7 a.m. on October 1, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0939 and are available online by going to *http://www.regulations.gov*, inserting USCG–2011–0939 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 BM1 Silvestre Suga III, Waterways Management Division, Coast Guard MSU Portland; telephone 503–240–9319, e-mail *Silvestre.g.suga@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 due to insufficient time in which to publish an NPRM since the Dredge Vessels Patriot and Liberty would have started their operations on the Columbia and Willamette Rivers by the time the 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**. Publishing a NPRM would be contrary to public interest since immediate action is necessary to safeguard the Dredge Vessels Patriot and Liberty from sabotage, other subversive acts, or accidents, and otherwise protect these vessels.

Background and Purpose

The Dredge Vessels Patriot and Liberty will be conducting operations at Columbia River Mile 105 and Willamette River Mile 2. This temporary security zone is necessary to help ensure the security of these vessels while conducting dredging operations. This will be done by prohibiting all persons or vessels from operating near the vessels while they are located in the Columbia or Willamette Rivers.

Discussion of Rule

This rule establishes a temporary security zone around the Dredge Vessels Patriot and Liberty while they are anchored, underway, or conducting dredging operations. The security zone encompasses all waters within 200 yards around the vessels. No person or vessel may enter or remain in the security zone unless authorized by the Captain of the Port, Columbia River or his designated representative.

The security zone will be in effect while the Dredge Vessels are operating in the Columbia and Willamette Rivers between approximately 7 a.m. on October 1, 2011 through October 31, 2011.

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 security zone is limited in duration and maritime traffic will be able to transit around the zones.

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 security zone created by this rule. The security zone will not have a significant economic impact on a substantial number of small entities because maritime traffic will be able to transit around the zone and therefore any interruption to navigation is minimal.

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 security 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. 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.T13–197 to read as follows:

§ 165.T13–197 Security Zone; Columbia and Willamette Rivers, M/V PATRIOT AND M/V LIBERTY.

(a) *Location.* The following area is a security zone: All waters within 200 yards in all directions of Dredge vessels Patriot and Liberty while these vessels are operating at Willamette River Mile 2 and Columbia River Mile 105.

(b) *Regulations.* In accordance with the general regulations in 33 CFR part 165, subpart D, no person may enter or remain in the security zone created in this section or bring, cause to be brought, or allow to remain in the security 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 security zone created by this section. See 33 CFR part 165, subpart D, for additional information and requirements.

(c) *Enforcement period.* The security zone created by this section will be in effect from 7 a.m. on October 1, 2011, through October 31, 2011.

Dated: September 28, 2011.

B.C. Jones,

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

[FR Doc. 2011–26413 Filed 10–12–11; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2010–1001; FRL–9478–4]

Approval and Promulgation of Air Quality Implementation Plans; Indiana; Miscellaneous Metal and Plastic Parts Surface Coating Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a revision to the Indiana State Implementation Plan (SIP) submitted by the Indiana Department of Environmental Management (IDEM) on November 24, 2010. The SIP revision consists of amendments to 326 Indiana Administrative Code (IAC) 8–2–1 and 326 IAC 8–2–9, the applicability sections for Indiana's miscellaneous metal and plastic parts surface coating rules. These rules are approvable because they satisfy the requirements of the Clean Air Act (CAA) for volatile organic compound (VOC) reasonably available control technology (RACT) rules.

DATES: This direct final rule will be effective December 12, 2011, unless EPA receives adverse comments by November 14, 2011. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2010–1001, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: aburano.douglas@epa.gov.*
3. *Fax:* (312) 408–2279.
4. *Mail:* Douglas Aburano, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Douglas Aburano, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2010–1001. 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* website 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 Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Steven Rosenthal, Environmental Engineer, at (312) 886–6052 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6052, *rosenthal.steven@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

I. Background

On February 24, 2010, at 75 FR 8246, EPA approved amendments to 326 IAC 8 into the Indiana SIP to address VOC RACT requirements for the Lake and Porter County portion of the Chicago-Gary-Lake County, IL–IN, 8-hour ozone nonattainment area. These amendments added limits for miscellaneous metal and plastic parts surface coating operations, consistent with EPA's 2008 Control Technique Guideline document for Miscellaneous Metal and Plastic Parts Coating operations. The State's intention was to cover operations located only in Lake and Porter Counties, with the limits specified in Subsection 326 IAC 8–2–9(d). However, the applicability section, 326 IAC 8–2–9(a) did not clearly state that only Lake and Porter County sources were subject to the additional requirements.

In its November 24, 2010, submittal to EPA, IDEM requested that EPA approve amendments to 326 IAC 8–2–1 and 326 IAC 8–2–9 into the state SIP. Specifically, IDEM requested that we approve amendments to the applicability provisions in 326 IAC 8–2–9(a) to clarify that the new VOC limits in subsection (d) apply only to miscellaneous metal and plastic parts surface coating operations in Lake and Porter Counties. IDEM also requested that we approve amendments to the general applicability provisions at 326 IAC 8–2–1(a)(3) and 326 IAC 8–2–1(a)(4) to clarify that the older (in Indiana's SIP prior to February 24, 2010) surface coating requirements in 326 IAC 8–2 continue to apply to miscellaneous metal coating operations outside of Lake and Porter Counties. The revised rules were adopted by the Indiana Air Pollution Control Board on September 1, 2010, and became effective on November 19, 2010. No public comments were received at the hearing held by the state on September 1, 2010.

II. What action is EPA taking?

EPA is approving the state's request to amend the general applicability provisions at 326 IAC 8–2–1(a)(3) and (a)(4) and the applicability provisions in 326 IAC 8–2–9(a).

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective December 12, 2011 without further notice unless we receive relevant adverse written comments by November 14, 2011. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective December 12, 2011.

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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely

affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 12, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Volatile organic compounds.

Dated: September 30, 2011.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart P—Indiana

■ 2. In § 52.770 the table in paragraph (c) is amended by revising the entry for "Article 8. Volatile Organic Compound Rules" to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED INDIANA REGULATIONS

Indiana citation	Subject	Indiana effective date	EPA approval date	Notes
*	*	*	*	*
Article 8. Volatile Organic Compound Rules				
Rule 1. General Provisions:				
8–1–0.5	Definitions	10/18/1995	11/3/1999, 64 FR 59642.	
8–1–1	Applicability	6/5/1991	3/6/1992, 57 FR 8082.	
8–1–2	Compliance methods	12/15/2002	5/5/2003, 68 FR 23604.	
8–1–3	Compliance schedules	5/15/2010	4/14/2011, 76 FR 20850.	
8–1–4	Testing procedures	7/15/2001	9/11/2002, 67 FR 57515.	
8–1–5	Petition for site-specific reasonably available control technology (RACT) plan.	11/10/1988	9/6/1990, 55 FR 36635.	
8–1–6	New facilities; general reduction requirements.	6/24/2006	6/13/2007, 72 FR 32531.	
8–1–7	Military specifications	.....	10/27/1982, 47 FR 20586.	
8–1–9	General recordkeeping and reporting requirements.	5/22/1997	6/29/1998, 63 FR 35141.	
8–1–10	Compliance certification, recordkeeping, and reporting requirements for certain coating facilities using compliant coatings.	5/22/1997	6/29/1998, 63 FR 35141.	
8–1–11	Compliance certification, recordkeeping, and reporting requirements for certain coating facilities using daily-weighted averaging.	5/22/1997	6/29/1998, 63 FR 35141.	

EPA-APPROVED INDIANA REGULATIONS—Continued

Indiana citation	Subject	Indiana effective date	EPA approval date	Notes
8–1–12	Compliance certification, recordkeeping, and reporting requirements for certain coating facilities using control devices.	5/22/1997	6/29/1998, 63 FR 35141.	
Rule 2. Surface Coating Emission Limitations:				
8–2–1	Applicability	11/19/2010	10/13/11, [Insert page number where the document begins].	
8–2–2	Automobile and light duty truck coating operations.	1/2/2010	2/24/2010, 75 FR 8246.	
8–2–3	Can coating operations		2/10/1986, 51 FR 4912.	
8–2–4	Coil coating operations		10/27/1982, 47 FR 20586.	
8–2–5	Paper coating operations	12/3/2009	2/24/2010, 75 FR 8246.	
8–2–6	Metal furniture coating operations	12/3/2009	2/24/2010, 75 FR 8246.	
8–2–7	Large appliance coating operations	12/3/2009	2/24/2010, 75 FR 8246.	
8–2–8	Magnet wire coating operations		10/27/1982, 47 FR 20586.	
8–2–9	Miscellaneous metal and plastic parts coating operations.	11/19/2010	10/13/11, [Insert page number where the document begins].	
8–2–10	Flat wood panels; manufacturing operations.	12/3/2009	2/24/2010, 75 FR 8246.	
8–2–11	Fabric and vinyl coating	10/23/1988	3/6/1992, 57 FR 8082.	
8–2–12	Wood furniture and cabinet coating	4/10/1988	11/24/1990, 55 FR 39141.	
Rule 3. Organic Solvent Degreasing Operations:				
8–3–1	Applicability	5/27/1999	9/14/2001, 66 FR 47887.	
8–3–2	Cold cleaner operation		10/27/1982, 47 FR 47554.	
8–3–3	Open top vapor degreaser operation		10/27/1982, 47 FR 47554.	
8–3–4	Conveyorized degreaser operation		10/27/1982, 47 FR 47554.	
8–3–5	Cold cleaner degreaser operation and control.		3/6/1992, 57 FR 8082.	
8–3–6	Open top vapor degreaser operation and control requirements.		3/6/1992, 57 FR 8082.	
8–3–7	Conveyorized degreaser operation and control.	6/5/1991	3/6/1992, 57 FR 8082.	
8–3–8	Material requirements for cold cleaning degreasers.	5/27/1999	9/14/2001, 66 FR 47887.	
Rule 4. Petroleum Sources:				
8–4–1	Applicability	5/15/2010	4/14/2011, 76 FR 20850.	
8–4–2	Petroleum refineries		1/18/1983, 48 FR 2127.	
8–4–3	Petroleum liquid storage facilities		2/10/1986, 51 FR 4912.	
8–4–4	Bulk gasoline terminals		1/18/1983, 48 FR 2127.	
8–4–5	Bulk gasoline plants		1/18/1983, 48 FR 2127.	
8–4–6	Gasoline dispensing facilities	5/15/2010	4/14/2011, 76 FR 20850.	
8–4–7	Gasoline transports	11/5/1999	5/31/2002, 67 FR 38006.	
8–4–8	Leaks from petroleum refineries; monitoring; reports.	6/5/1991	3/6/1992, 57 FR 8082.	
8–4–9	Leaks from transports and vapor collection systems; records.	11/5/1999	5/31/2002, 67 FR 38006.	
Rule 5. Miscellaneous Operations:				
8–5–1	Applicability of rule	3/22/2007	2/20/2008, 73 FR 9201.	
8–5–2	Asphalt paving rules		2/10/1986, 51 FR 4912.	
8–5–3	Synthesized pharmaceutical manufacturing operations.	5/18/1990	3/6/1992, 57 FR 8082.	
8–5–4	Pneumatic rubber tire manufacturing		1/18/1983, 48 FR 2124.	
8–5–5	Graphic arts operations	5/22/1997	6/29/1998, 63 FR 35141.	
8–5–6	Fuel grade ethanol production at dry mills	3/22/2007	2/20/2008, 73 FR 9201.	
Rule 6. Organic Solvent Emission Limitations:				
8–6–1	Applicability of rule		1/18/1983, 48 FR 2124.	
8–6–2	Emission limits; exemptions		1/18/1983, 48 FR 2124.	
Rule 7. Specific VOC Reduction Requirements for Lake, Porter, Clark, and Floyd Counties:				

EPA-APPROVED INDIANA REGULATIONS—Continued

Indiana citation	Subject	Indiana effective date	EPA approval date	Notes
8–7–1	Definitions	1/21/1995	7/5/1995, 60 FR 34856.	
8–7–2	Applicability	1/21/1995	7/5/1995, 60 FR 34856.	
8–7–3	Emission limits	1/21/1995	7/5/1995, 60 FR 34856.	
8–7–4	Compliance methods	1/21/1995	7/5/1995, 60 FR 34856.	
8–7–5	Compliance plan	1/21/1995	7/5/1995, 60 FR 34856.	
8–7–6	Certification, recordkeeping, and reporting requirements for coating facilities.	1/21/1995	7/5/1995, 60 FR 34856.	
8–7–7	Test methods and procedures	1/21/1995	7/5/1995, 60 FR 34856.	
8–7–8	General recordkeeping and reports	1/21/1995	7/5/1995, 60 FR 34856.	
8–7–9	Control system operation, maintenance, and testing.	1/21/1995	7/5/1995, 60 FR 34856.	
8–7–10	Control system monitoring, recordkeeping, and reporting.	1/21/1995	7/5/1995, 60 FR 34856.	
Rule 8. Municipal Solid Waste Landfills Located in Clark, Floyd, Lake, and Porter Counties:				
8–8–1	Applicability	1/18/1996	1/17/1997, 62 FR 2591.	
8–8–2	Definitions	1/18/1996	1/17/1997, 62 FR 2591.	
8–8–3	Requirements; incorporation by reference of federal standards.	1/18/1996	1/17/1997, 62 FR 2591.	
8–8–4	Compliance deadlines	1/18/1996	1/17/1997, 62 FR 2591.	
8–8–8.1	Municipal Solid Waste Landfills Not Located in Clark, Floyd, Lake, and Porter Counties.	1/18/1996	1/17/1997, 62 FR 2591.	
8–8.1–1	Applicability	1/18/1996	1/17/1997, 62 FR 2591.	
8–8.1–2	Definitions	1/18/1996	1/17/1997, 62 FR 2591.	
8–8.1–3	Requirements; incorporation by reference of federal standards.	1/18/1996	1/17/1997, 62 FR 2591.	
8–8.1–4	Compliance deadlines	1/18/1996	1/17/1997, 62 FR 2591.	
8–8.1–5	Alternative requirements	1/18/1996	1/17/1997, 62 FR 2591.	
Rule 9. Volatile Organic Liquid Storage Vessels:				
8–9–1	Applicability	1/18/1996	1/17/1997, 62 FR 2593.	
8–9–2	Exemptions	1/18/1996	1/17/1997, 62 FR 2593.	
8–9–3	Definitions	1/18/1996	1/17/1997, 62 FR 2593.	
8–9–4	Standards	1/18/1996	1/17/1997, 62 FR 2593.	
8–9–5	Testing and procedures	1/18/1996	1/17/1997, 62 FR 2593.	
8–9–6	Recordkeeping and reporting requirements	1/18/1996	1/17/1997, 62 FR 2593.	
Rule 10. Automobile Refinishing:				
8–10–1	Applicability	8/13/1998	12/20/1999, 64 FR 71031.	
8–10–2	Definitions	11/2/1995	6/13/1996, 61 FR 29965.	
8–10–3	Requirements	5/23/1999	12/20/1999, 64 FR 71031.	
8–10–4	Means to limit volatile organic compound emissions.	11/2/1995	6/13/1996, 61 FR 29965.	
8–10–5	Work practice standards	8/13/1998	12/20/1999, 64 FR 71031.	
8–10–6	Compliance procedures	8/13/1998	12/20/1999, 64 FR 71031.	
8–10–7	Test procedures	11/2/1995	6/13/1996, 61 FR 29965.	
8–10–8	Control system operation, maintenance, and monitoring (Repealed).	11/2/1995	6/13/1996, 61 FR 29965.	
8–10–9	Recordkeeping and reporting	8/13/1998	12/20/1999, 64 FR 71031.	
Rule 11. Wood Furniture Coating:				
8–11–1	Applicability	1/4/1996	10/30/1996, 61 FR 55889.	
8–11–2	Definitions	1/4/1996	10/30/1996, 61 FR 55889.	
8–11–3	Emission limits	1/4/1996	10/30/1996, 61 FR 55889.	
8–11–4	Work practice standards	1/4/1996	10/30/1996, 61 FR 55889.	
8–11–5	Continuous compliance plan	1/4/1996	10/30/1996, 61 FR 55889.	
8–11–6	Compliance procedures and monitoring requirements.	1/4/1996	10/30/1996, 61 FR 55889.	
8–11–7	Test procedures	1/4/1996	10/30/1996, 61 FR 55889.	
8–11–8	Recordkeeping requirements	1/4/1996	10/30/1996, 61 FR 55889.	
8–11–9	Reporting requirements	1/4/1996	10/30/1996, 61 FR 55889.	
8–11–10	Provisions for sources electing to use emissions averaging.	1/4/1996	10/30/1996, 61 FR 55889.	

EPA-APPROVED INDIANA REGULATIONS—Continued

Indiana citation	Subject	Indiana effective date	EPA approval date	Notes
Rule 12. Shipbuilding or Ship Repair Operations in Clark, Floyd, Lake, and Porter Counties:				
8–12–1	Applicability	5/1/1996	1/22/1997, 62 FR 3216.	
8–12–2	Exemptions	7/15/2001	4/1/2003, 68 FR 15664.	
8–12–3	Definitions	5/1/1996	1/22/1997, 62 FR 3216.	
8–12–4	Volatile organic compound emissions limiting requirements.	7/15/2001	4/1/2003, 68 FR 15664.	
8–12–5	Compliance requirements	7/15/2001	4/1/2003, 68 FR 15664.	
8–12–6	Test methods and procedures	7/15/2001	4/1/2003, 68 FR 15664.	
8–12–7	Recordkeeping, notification, and reporting requirements.	7/15/2001	4/1/2003, 68 FR 15664.	
Rule 13. Sinter Plants:				
8–13–1	Applicability	7/24/1998	7/5/2000, 65 FR 41350.	
8–13–2	Definitions	7/24/1998	7/5/2000, 65 FR 41350.	
8–13–3	Emission limit	7/24/1998	7/5/2000, 65 FR 41350.	
8–13–4	Compliance requirements	7/24/1998	7/5/2000, 65 FR 41350.	
8–13–5	Test procedures	7/24/1998	7/5/2000, 65 FR 41350.	
8–13–6	Control measure operation, maintenance, and monitoring.	7/24/1998	7/5/2000, 65 FR 41350.	
8–13–7	Recordkeeping and reporting	7/24/1998	7/5/2000, 65 FR 41350.	
8–13–8	Continuous emissions monitoring	7/24/1998	7/5/2000, 65 FR 41350.	

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 93

[EPA–HQ–OAR–2011–0393; FRL–9478–1]

RIN 2060–AR03

Transportation Conformity Rule: MOVES Regional Grace Period Extension

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to extend the grace period before the Motor Vehicle Emission Simulator model (currently MOVES2010a) is required for regional emissions analyses for transportation conformity determinations ("regional conformity analyses"). This final rule provides an additional year to the previously established two-year conformity grace period. As a result, EPA is announcing in this **Federal Register** that MOVES is not required for regional conformity analyses until March 2, 2013. This action does not affect EPA's previous approval of the use of MOVES in official state air quality implementation plan (SIP) submissions or the existing grace period before MOVES2010a is required for carbon monoxide and particulate matter hot-spot analyses for project-level conformity determinations.

DATES: This rule is effective on December 12, 2011 without further notice, unless EPA receives adverse comment by November 14, 2011. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit any comments to Docket ID No. EPA–OAR–2011–0393, by one of the following methods:

- *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 Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. EPA–HQ–OAR–2011–0393. Please include a total of two copies.
- *Hand Delivery:* Air Docket, Environmental Protection Agency: EPA West Building, EPA Docket Center (Room 3334), 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. EPA–HQ–OAR–2011–0393. Please include two copies. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2011–0393. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *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 *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 additional instructions on submitting comments, go to the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744 and the telephone number for the Air and Radiation Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Meg Patulski, State Measures and Conformity Group, Transportation and Regional Programs Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734) 214–4842; fax number: (734) 214–4052; e-mail address: *patulski.meg@epa.gov;* or Astrid Larsen, State Measures and Conformity Group, Transportation and Regional Programs Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734) 214–4812; fax number: (734) 214–4052; e-mail address: *larsen.astrid@epa.gov.*

SUPPLEMENTARY INFORMATION: The content of this preamble is listed in the following outline:

If this rule becomes effective, the conformity grace period in applicable areas will end on March 2, 2013, after which MOVES2010a is required to be used for new regional conformity analyses.

Availability of MOVES2010a and Support Materials

Copies of the official version of the MOVES2010a motor vehicle emissions model, along with user guides and supporting documentation, are available on EPA's MOVES Web site: *http://www.epa.gov/otaq/models/moves/index.htm.*

Guidance on how to apply MOVES2010a for SIPs and transportation conformity purposes, including "Policy Guidance on the Use of MOVES2010 for State Implementation Plan Development, Transportation Conformity, and Other Purposes" (EPA–420–B–09–046, December 2009) and "Technical Guidance on the Use of MOVES2010 for Emission Inventory Preparation in State Implementation Plans and Transportation Conformity" (EPA–420–B–10–023, April 2010) can be found on the EPA's transportation conformity Web site at: *http://www.epa.gov/otaq/stateresources/transconf/policy.htm.*

I. General Information

A. Why is EPA using a direct final rule?

EPA is publishing this rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. This rule makes a one-time, minor revision to the transportation conformity rule to provide administrative relief requested by state and local agencies for certain nonattainment and maintenance areas. As described more fully below, there are significant technical differences between MOVES2010a and the previous emissions model, and affected state and local agencies require additional time beyond the two-year grace period provided by 40 CFR 93.111(b) to make the conformity transition to MOVES2010a successfully. Today's action is based on the circumstances unique to this transition, and does not change the grace period provisions applicable to future models. However, in the "Proposed Rules" section of today's **Federal Register**, we are publishing a separate document that will serve as the proposed rule to extend the MOVES2010a regional conformity grace period if adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

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

B. Does this action apply to me?

Entities potentially regulated by the transportation conformity rule are those that adopt, approve, or fund transportation plans, transportation improvement programs (TIPs), or projects under title 23 U.S.C. or title 49 U.S.C. Chapter 53. Regulated categories and entities affected by today's action include:

Category	Examples of regulated entities
Local government	Local transportation and air quality agencies, including metropolitan planning organizations (MPOs).
State government	State transportation and air quality agencies.
Federal government	Department of Transportation (Federal Highway Administration (FHWA) and Federal Transit Administration (FTA)).

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this direct final rule. This table lists the types of entities of which EPA is aware that potentially could be regulated by the transportation conformity rule. Other types of entities not listed in the table could also be regulated. To determine whether your organization is regulated by this action, you should carefully examine the applicability requirements in 40 CFR 93.102. If you have questions regarding the applicability of this action to a particular entity, consult the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

C. What should I consider as I prepare any comments for EPA?

1. Submitting CBI

Do not submit this information to EPA through *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.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

3. Docket Copying Costs

You may be required to pay a reasonable fee for copying docket materials.

D. How do I get copies of this direct final rule and other documents?

1. Docket

EPA has established an official public docket for this action under Docket ID No. EPA–HQ–OAR–2011–0393. You can get a paper copy of this **Federal Register** document, as well as the documents specifically referenced in this action, any public comments received, and other information related to this action at the official public docket. See the **ADDRESSES** section for its location.

2. Electronic Access

You may access this **Federal Register** document electronically through EPA's transportation conformity Web site at: *http://www.epa.gov/otaq/stateresources/transconf/index.htm.* You may also access this document electronically under the **Federal Register** listings at: *http://www.epa.gov/fedrgstr/.*

An electronic version of the official public docket is available through *www.regulations.gov.* You may use *www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the electronic public docket. Information claimed as CBI and other information for which disclosure is restricted by statute is not available for public viewing in the electronic public docket. EPA's policy is that copyrighted material will not be placed in the electronic public docket but will be available only in printed, paper form in the official public docket.

To the extent feasible, publicly available docket materials will be made available in the electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in the electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in the **ADDRESSES** section. EPA intends to provide electronic access in the future to all of the publicly available docket materials through the electronic public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to the electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in the electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in the electronic public docket along with a brief description written by the docket staff.

For additional information about the electronic public docket, visit the EPA Docket Center homepage at: *http://www.epa.gov/epahome/dockets.htm.*

II. Background

A. What is transportation conformity?

Transportation conformity is required under Clean Air Act (CAA) section 176(c) (42 U.S.C. 7506(c)) to ensure that transportation plans, transportation improvement programs (TIPs), and federally supported highway and transit projects are consistent with the purpose of the SIP. Conformity to the purpose of the SIP means that transportation activities will not cause or contribute to new air quality violations, worsen existing violations, or delay timely attainment of the relevant national ambient air quality standard (NAAQS) or required interim milestones.

Transportation conformity (hereafter, "conformity") applies to areas that are designated nonattainment, and those areas redesignated to attainment after 1990 ("maintenance areas") for transportation-related criteria pollutants: ozone, particulate matter ($PM_{2.5}$ and PM_{10}),[1] carbon monoxide (CO), and nitrogen dioxide (NO_2). EPA's conformity rule (40 CFR parts 51 and 93) establishes the criteria and procedures for determining whether transportation activities conform to the SIP. EPA first promulgated the conformity rule on November 24, 1993 (58 FR 62188) and subsequently published several other amendments. The Department of Transportation (DOT) is EPA's Federal partner in implementing the conformity regulation. EPA has coordinated with DOT, and they concur with this direct final rule.

B. What is MOVES2010a, and how has it been implemented to date?

The Motor Vehicle Emission Simulator model (MOVES) is EPA's state-of-the-art model for estimating emissions from highway vehicles, based on analyses of millions of emission test results and considerable advances in the Agency's understanding of vehicle emissions. MOVES is currently EPA's official emissions model for state and local agencies to estimate volatile organic compounds (VOCs), nitrogen oxides (NO_X), PM, CO, and other precursors from cars, trucks, buses, and motorcycles for SIP purposes and

[1] 40 CFR 93.102(b)(1) defines $PM_{2.5}$ and PM_{10} as particles with an aerodynamic diameter less than or equal to a nominal 2.5 and 10 micrometers, respectively.

conformity determinations outside of California. MOVES' database-centered design allows EPA to update emissions data more frequently and allows users much greater flexibility in organizing input and output data.

MOVES2010a is the latest official version of MOVES that EPA has approved for SIP and conformity purposes. EPA originally announced the release of MOVES2010 in the **Federal Register** on March 2, 2010 (75 FR 9411) and subsequently released MOVES2010a on September 8, 2010. MOVES2010a includes minor revisions that enhance model performance and do not significantly affect criteria pollutant emissions results. Since these are minor revisions to MOVES2010, MOVES2010a is not considered a "new model" under section 93.111 of the conformity rule, as described further below.

MOVES2010a is a significant improvement over the previous emissions model, MOBILE6.2,[2] in terms of quality of results and overall functionality. It incorporates the latest emissions data, more sophisticated calculation algorithms, increased user flexibility, new software design, and significant new capabilities. While these changes improve the quality of on-road mobile source inventories, the overall degree of change in the model's function also adds to the start-up time required for the transition from MOBILE6.2 to MOVES2010a.

EPA developed MOVES as a completely new model. Whereas MOBILE6.2 was written in FORTRAN and used simple text files for data input and output, MOVES2010a is written in JAVA and uses a relational database structure in MYSQL to handle input and output as data tables. These changes make MOVES more flexible, and the analysis of new data incorporated within MOVES will enhance state and local agency understanding of how on-road mobile sources contribute to emissions inventories and the relative effectiveness of various control strategies. However, this new model framework has created a significant learning curve for state and local agency staff that are required to use MOVES.[3]

In addition to the challenges of learning new software, state and local agencies also have to make substantial changes in the processes they have developed to create model input and apply model output. While there were incremental changes between each previous version of the MOBILE model, the basic input and output structure of that model was essentially unchanged since the early 1980s. Over time, state and local agencies developed their own methods for incorporating local inputs in MOBILE format and for post-processing MOBILE results for inventory development and air quality modeling. To help state and local agencies with this part of the current transition, EPA created a number of tools that take input data formatted for MOBILE6.2 and convert that data for use in MOVES2010a.

EPA anticipated many of these challenges when it released MOVES. In order to assist in this model transition, EPA and DOT have already provided hands-on MOVES training in many states.[4] Additional MOVES training for regional inventories has been requested, and will continue to be offered for the foreseeable future. EPA continues to provide other technical assistance to state and local agencies via on-going conference calls with user groups, e-mail and phone support, a frequently asked questions web page, and web-based presentations. All of these efforts are helping state and local agencies make the transition to MOVES2010a, and many agencies are making significant progress in applying the model for official purposes. However, other state and local agencies are still developing the technical capacity to use MOVES2010a, and need more time to transition to the model and then evaluate whether SIPs and their motor vehicle emissions budgets, or transportation plans and TIPs, should be revised for future conformity determinations.

C. Why is EPA conducting this rulemaking?

Today's action provides additional time that is critical for nonattainment and maintenance areas to learn and apply MOVES2010a for regional conformity analyses.[5] EPA has been contacted by several state and local transportation and air quality agencies and associations that are concerned that there has not been sufficient transition time for using MOVES2010a in regional conformity analyses. These concerns revolve around the time needed to build technical capacity for using MOVES2010a as well as completing necessary SIP and/or transportation plan/TIP changes to assure conformity in the future. Further details on today's action are provided below.

Today's action does not affect EPA's previous approval of MOVES2010a for official SIP submissions developed outside of California.[6] Today's rulemaking also does not affect the existing grace period before MOVES2010a is required for $PM_{2.5}$, PM_{10}, and CO hot-spot analyses for project-level conformity determinations (75 FR 79370). EPA coordinated closely with DOT in developing today's action, and DOT concurs on this direct final rule.

III. Extension of MOVES2010a Regional Conformity Grace Period

A. Background

CAA section 176(c)(1) states that "* * * [t]he determination of conformity shall be based on the most recent estimates of emissions, and such estimates shall be determined from the most recent population, employment, travel, and congestion estimates * * *." To meet this requirement, section 93.111 of the conformity rule requires that conformity determinations be based on the latest motor vehicle emissions model approved by EPA. When EPA approves a new emissions model, EPA consults with DOT to establish a grace period before the model is required for conformity analyses (40 CFR 93.111(b)). EPA must consider many factors when establishing a grace period for conformity determinations (40 CFR 93.111(b)(2)). The length of the grace period will depend on the degree of change in the model and the scope of re-planning likely to be necessary for MPOs in order to assure conformity. The conformity rule provides for a grace period for new emissions models of between three and 24 months (40 CFR 93.111(b)(1)).

In the preamble to the original 1993 conformity rule, EPA articulated its intentions for establishing the length of conformity grace period for a new emissions model (58 FR 62211):

"EPA and DOT will consider extending the grace period if the effects of the new emissions model are so significant that previous SIP demonstrations of what emission levels are consistent with attainment would be substantially affected. In such cases, states should have an opportunity to revise their SIPs before MPOs must use the model's new emissions factors.

[2] EPA announced the release of MOBILE6.2 in 2004 (69 FR 28830).

[3] Some states also purchased computers with additional capacity and features for running MOVES.

[4] To date, EPA and DOT staff have provided a 2-day hands-on MOVES course for regional emissions inventories (including regional conformity analyses) at over 30 locations around the country.

[5] MPOs conduct regional conformity analyses to demonstrate that transportation plans and TIPs are consistent with the air quality purposes of the SIP. Regional conformity analyses are also conducted in "isolated rural nonattainment and maintenance areas" (defined by 40 CFR 93.101).

[6] MOVES is not approved for use in California. EPA approved and announced the latest version of California's EMFAC model (EMFAC2007) for SIP development and regional conformity analyses in that state on January 18, 2008 (73 FR 3464).

EPA encourages all agencies to inform EPA of the impacts of new emissions models in their area, and EPA may pause to seek such input before determining the length of the grace period."

Section 93.111 conformity requirements have not changed since 1993, and have been implemented successfully for many previous model transitions.

On March 2, 2010, EPA announced the official release of MOVES2010 and established a two-year grace period before this model was required for new regional conformity analyses (75 FR 9411). Although the original grace period was established for MOVES2010, EPA clarified in September 2010 that the same grace period for regional conformity analyses also applies to MOVES2010a.[7] EPA based its decision to establish a two-year conformity grace period on the factors under section 93.111(b)(2), and advised areas to use the interagency consultation process to examine the impact of using MOVES in their future regional conformity analyses.

Without further EPA action, MOVES2010a would be required for regional conformity analyses that begin after March 2, 2012. As discussed further in today's action, the special circumstances of the transition from MOBILE to MOVES2010a require a reevaluation of the length of this conformity grace period.

B. Description of Direct Final Rule

In today's action, EPA is providing an additional year before MOVES2010a is required for regional conformity analyses. As a result, EPA is also announcing in today's **Federal Register** that MOVES2010a will be required for new regional conformity analyses that begin after March 2, 2013. State and local agencies outside California can use MOVES2010a for regional conformity analyses earlier than March 2, 2013, if desired, and would be required to do so under limited circumstances such as after MOVES2010a SIP motor vehicle emissions budgets have been found adequate or approved for conformity purposes.

Due to the unique circumstances presented by the transition from MOBILE6.2 to MOVES2010a, today's action adds a new paragraph (b)(3) to section 93.111 of the conformity rule. Today's final rule only applies to MOVES2010a and any future minor revisions to this model that EPA releases before March 2, 2013. Such minor revisions will not start a new grace period for regional conformity analyses and could include performance enhancements that reduce MOVES run time or model improvements to reduce errors in operating the model. Any major model updates would be evaluated separately as a "new model" under conformity rule section 93.111, pursuant to previously established requirements.

Between now and the end of the extended conformity grace period (March 2, 2013), areas should use the interagency consultation process to examine how MOVES2010a will impact their future MPO transportation plan/TIP conformity determinations. Isolated rural areas should also consider the impact of using MOVES2010a on future regional conformity analyses. Agencies should carefully consider whether the SIP and its motor vehicle emissions budgets should be revised with MOVES2010a or if transportation plans and TIPs should be revised before the end of the conformity grace period, since doing so may be necessary to ensure conformity in the future.

In general, regional conformity analyses that are started during the grace period can use either MOBILE6.2 or MOVES2010a. When the grace period ends on March 2, 2013, MOVES2010a will become the only approved motor vehicle emissions model for regional conformity analyses outside California. This means that all new regional conformity analyses started after the end of the grace period must be based on MOVES2010a, even if the SIP is based on MOBILE6.2 or earlier versions of MOBILE.

If you have questions about which model should be used in your conformity determination, you can consult with your EPA Regional Office. For complete explanations of how MOVES2010a is to be implemented for transportation conformity, including details about using MOVES2010a during the grace period, refer to EPA's existing MOVES policy guidance.[8]

C. Rationale

MOVES2010a is EPA's best tool for estimating criteria pollutant emissions, and it is a significant improvement over previous MOBILE models. State and local agencies have made significant progress to date in using MOVES2010a, and EPA supports these efforts and encourages that they continue. However, as discussed above, challenges related to start-up and model application have been much greater in the transition to MOVES2010a, compared to past transitions between MOBILE model versions. As a result, EPA has determined that a one-year extension of the MOVES2010a grace period is necessary for state and local agencies to complete the current transition. Today's action ensures that state and local governments have the necessary time to implement the conformity rule as originally intended.

Since 1993, the fundamental purpose of section 93.111(b) of the conformity rule has been to provide a sufficient amount of time for MPOs and other state and local agencies to adapt to using new emissions tools. As discussed above, the transition to a new emissions model for conformity involves more than learning to use the new model and preparing input data and model output. After model start-up is complete, state and local agencies also need to consider how the model affects regional conformity analysis results and whether SIP and/or transportation plan/TIP changes are necessary to assure future conformity determinations. EPA believes that this one-time extension of the current MOVES2010a regional grace period is critical to assure future conformity determinations based on MOVES2010a.

EPA has the discretion to establish an extended grace period for MOVES2010a, and today's action is consistent with CAA section 176(c)(1) requirements. EPA believes that providing one additional year is appropriate due to this unique transition from MOBILE6.2 to MOVES2010a. This decision is consistent with the existing conformity criteria in section 93.111(b)(2) of the conformity rule that requires the length of the grace period to be based on "the degree of change in the model and the scope of re-planning likely to be necessary by MPOs in order to assure conformity."

Today's action does not delay the use of MOVES2010a in SIP development or slow down past progress toward using the new model for regional conformity analyses. As noted above, many state and local agencies are already learning and applying MOVES2010a. Some are revising existing SIP budgets using the new model, while others may be incorporating MOVES2010a into new maintenance plans or clean data determinations. Under EPA's existing MOVES policy guidance, new or revised SIP budgets must still be based on MOVES2010a. For example, MOVES2010a continues to be required for attainment SIPs for the 2006 24-hour

[7] See "EPA Releases MOVES2010a Mobile Source Emissions Model Update: Questions and Answers" (EPA–420–F–10–050, August 2010) at: *http://www.epa.gov/otaq/models/moves/MOVES2010a/420f10050.pdf.*

[8] "Policy Guidance on the Use of MOVES2010 for State Implementation Plan Development, Transportation Conformity, and Other Purposes" (EPA–420–B–09–046, December 2009) can be found on the EPA's transportation conformity Web site at: *http://www.epa.gov/otaq/stateresources/transconf/policy.htm.*

$PM_{2.5}$ NAAQS. MOVES2010a is also required for any regional conformity analyses prior to March 2, 2013 if SIP budgets based on MOVES2010 or MOVES2010a are approved or found adequate sooner.[9]

In addition, today's action does not change the current MOVES2010a grace period for new $PM_{2.5}$, PM_{10}, and CO hot-spot analyses for project-level conformity determinations. EPA noted previously that a two-year conformity grace period was necessary to apply MOVES2010a for hot-spot analyses (75 FR 79370). However, the transition to MOVES2010a for project-level hot-spot analyses does not involve the complexity associated with the regional level, where SIP budgets and/or transportation plans/TIPs may need to be revised before regional conformity analyses based on MOVES2010a can be completed.

Finally, in issuing this rule, EPA is not proceeding pursuant to or reopening as a general matter the process and length of conformity grace periods for future emissions model approvals, which were previously established in 1993 (58 FR 62211). The unique set of circumstances involved in the current transition warrants additional state and local flexibility before MOVES2010a is required for regional conformity analyses.

IV. Conformity SIPs

The MOVES2010a regional grace period extension applies on the effective date of today's direct final rule in all nonattainment and maintenance areas. Section 51.390(a) of the conformity rule states that the Federal rule applies for the portion of the requirements that are not included in a state's approved conformity SIP.[10] Section 51.390(b) further allows state conformity provisions to contain criteria and procedures that are more stringent than the Federal requirements. However, in the case of states with conformity SIPs that include the grace period provision in 40 CFR 93.111(b)(1), EPA concludes that such states did not intend to require a shorter grace period than EPA, in consultation with DOT, believes is needed. Therefore, since the MOVES2010a grace period extension is a new provision being added to the conformity rule, it is not included in any current state conformity SIP and therefore applies immediately in all areas pursuant to section 51.390(a).

In addition, section 51.390(c) of the conformity rule requires states to submit a new or revised conformity SIP to EPA within 12 months of the **Federal Register** publication date of any final conformity amendments for certain situations. States with approved conformity SIPs that are prepared in accordance with current CAA requirements are not required to submit new conformity SIP revisions, since section 93.111 of the conformity rule is not contained in these SIPs. A conformity SIP prepared in accordance with current CAA requirements contains only the state's criteria and procedures for interagency consultation (40 CFR 93.105) and two additional provisions related to written commitments for certain control and mitigation measures (40 CFR 93.122(a)(4)(ii) and 93.125(c)). However, states with approved conformity SIPs that include section 93.111 from a previous rulemaking are required to submit a SIP revision by October 12, 2012, although EPA strongly encourages these states to submit a SIP revision with only the three required provisions.[11] A state without an approved conformity SIP is not required to submit a new conformity SIP within one year of today's action, but previous conformity SIP deadlines continue to apply.

For additional information on conformity SIPs, please refer to the January 2009 guidance entitled, "Guidance for Developing Transportation Conformity State Implementation Plans" available on EPA's Web site at: *http://www.epa.gov/otaq/stateresources/transconf/policy/420b09001.pdf*.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735; October 4, 1993), this action is a "significant regulatory action." Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and 13563 (76 FR 3821; January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action.

Under Executive Order 12866, this action is a "significant regulatory action." Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and 13563 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The information collection requirements of EPA's existing transportation conformity regulations and the revisions in today's action are already covered by EPA information collection request (ICR) entitled, "Transportation Conformity Determinations for Federally Funded and Approved Transportation Plans, Programs and Projects." OMB has previously approved the information collection requirements contained in the existing regulations at 40 CFR Part 93 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has assigned OMB control number 2060–0561. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR Part 9.

C. Regulatory Flexibility Act

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

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

After considering the economic impacts of today's rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This regulation directly affects Federal agencies and MPOs that, by definition, are designated under Federal

[9] See Questions 5, 6, and 11 of "Policy Guidance on the Use of MOVES2010 for State Implementation Plan Development, Transportation Conformity, and Other Purposes" (EPA–420–B–09–046, December 2009).

[10] A conformity SIP is required by the CAA and contains a state's conformity requirements, including the state's specific interagency consultation procedures.

[11] The conformity SIP may contain provisions more stringent than the Federal requirements, and in these cases, states would specify this intention in its original conformity SIP submission.

transportation laws only for metropolitan areas with a population of at least 50,000. These organizations do not constitute small entities within the meaning of the RFA. Therefore, this rule will not impose any requirements on small entities.

D. Unfunded Mandates Reform Act (UMRA)

This rule does not contain a Federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. This rule merely implements already established law that imposes conformity requirements and does not itself impose requirements that may result in expenditures of $100 million or more in any year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This rule will not significantly or uniquely impact small governments because it directly affects Federal agencies and MPOs that, by definition, are designated under Federal transportation laws only for metropolitan areas with a population of at least 50,000.

E. Executive Order 13132: Federalism

This rule does not have federalism implications. It will not have substantial direct effects on states, on the relationship between the national government and states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The CAA requires conformity to apply in certain nonattainment and maintenance areas as a matter of law, and today's action merely revises one provision for transportation planning entities in subject areas to follow in meeting their existing statutory obligations. Thus, EO 13132 does not apply to this rule.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). The CAA requires transportation conformity to apply in any area that is designated nonattainment or maintenance by EPA. Because today's rule does not significantly or uniquely affect the communities of Indian tribal governments, EO 13175 does not apply to this action.

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

This rule is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in EO 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a "significant energy action" as defined in Executive Order 13211 (66 FR 18355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency regarding energy. This action is not subject to EO 13211 because it does not have any adverse energy effects.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, material specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rule does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations. The final rule involves a minor revision that provides administrative relief but does not change the conformity rule's underlying requirements for regional conformity analyses.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a major rule as defined by 5 U.S.C. 804(2). This rule will be effective November 14, 2011.

List of Subjects in 40 CFR Part 93

Administrative practice and procedure, Air pollution control, Carbon monoxide, Clean Air Act, Environmental protection, Highways and roads, Intergovernmental relations, Mass transportation, Nitrogen dioxide, Ozone, Particulate matter, Transportation, Volatile organic compounds.

Dated: October 4, 2011.

Lisa P. Jackson,

Administrator.

For the reasons discussed in the preamble, 40 CFR Part 93 is amended as follows:

PART 93—[AMENDED]

■ 1. The authority citation for Part 93 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

■ 2. Section 93.111 is amended by adding paragraph (b)(3) to read as follows:

§ 93.111 Criteria and procedures: Latest emissions model.

* * * * *

(b) * * *

(3) Notwithstanding paragraph (b)(1) of this section, the grace period for using the MOVES2010a emissions model (and minor model revisions) for regional emissions analyses will end on March 2, 2013.

* * * * *

[FR Doc. 2011–26347 Filed 10–12–11; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[WT Docket No. 05–265; FCC 11–52]

Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services; Public Information Collection Approved by Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Federal Communications Commission (FCC) announces that it has received Office of Management and Budget (OMB) approval for public information collection 3060–0411, which is associated with the new complaint mechanism for resolving data roaming disputes with commercial mobile data service providers.

DATES: 47 CFR 20.12(e)(2), published May 6, 2011 at 76 FR 26199, is effective October 13, 2011.

FOR FURTHER INFORMATION CONTACT: Contact Judith B. Herman, Federal Communications Commission, at (202) 418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION: On September 7, 2011, the Commission received approval from the Office of Management and Budget for a revision to public information collection 3060–0411, which relates to the filing of complaints with the Federal Communications Commission.

The revision was necessitated by the adoption of a new data roaming rule requiring commercial mobile data service providers to offer data roaming arrangements to other such providers.[1] The Commission also provided a complaint process by adopting 47 CFR 20.12(e)(2). Specifically, a party alleging a violation of 47 CFR 20.12(e) may file a formal or informal complaint pursuant to the procedures in 47 CFR 1.716–1.718, 1.720, 1.721, and 1.723–1.735. It is this rule, 47 CFR 20.12(e)(2), that is now effective.

Rule: 47 CFR 20.12(e)(2).
Effective date: 10/13/2011.
OMB Control No.: 3060–0411.
OMB Approval Date: 09/07/2011.
Collection 3060–0411 Expiration Date: 09/30/2014.
Title: Procedures for Formal Complaints.
Form No.: FCC Form 485.
Estimated Annual Burden: 20 respondents; 301 responses; 1,349 total annual hours.

Needs and Uses: On April 7, 2011, the Commission adopted, for data roaming, a complaint procedure using most of the procedural processes already in place for resolving formal complaints against common carriers. Specifically, a party alleging a violation of 47 CFR 20.12(e) may file a formal or informal complaint pursuant to the procedures in 47 CFR 1.716–1.718, 1.720, 1.721, and 1.723–1.735. The Commission finds that it is in the public interest to ensure a consistent Commission process for resolving both voice and data roaming complaints. Moreover, some roaming disputes will involve both data and voice and are likely to have factual issues common to both types of roaming. This approach allows a party to bring a single proceeding to address such a dispute, rather than having to bifurcate the matter and initiate two separate proceedings under two different sets of procedures. This, in turn, will be more efficient for the parties involved, as well as for the Commission, and should result in faster resolution of such disputes.

This collection of information includes the process for submitting a formal complaint. The Commission uses this information to determine the sufficiency of complaints and to resolve the merits of disputes between the parties. Orders issued by the Commission in formal complaint proceedings are based upon evidence and argument produced by the parties in accordance with the Formal Complaint Rules. If the information were not collected, the Commission would not be able to resolve common carrier or commercial mobile data service provider related complaint proceedings. 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 control number.

[1] *See* Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services, WT Docket No. 05–265, FCC 11–52, *Second Report and Order,* 26 FCC Rcd 5411, 76 FR 26199 (2011); 47 CFR 20.12(e).

Federal Communications Commission.
Marlene H. Dortch,
Secretary.

[FR Doc. 2011–26398 Filed 10–12–11; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[DA 11–1649]

Common Carriers; Editorial Amendments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission via the Office of Managing Director makes two nonsubstantive, editorial amendments to Part 64 of the Commission's rules. The Managing Director makes these amendments to delete certain provisions and notes that are without current legal effect and thus obsolete. The Chief of the Consumer and Governmental Affairs Bureau has approved these editorial amendments.

DATES: Effective October 13, 2011.

FOR FURTHER INFORMATION CONTACT: Deborah Broderson, Office of the Bureau Chief, Consumer and Governmental Affairs Bureau at (202) 418–0652, or e-mail: *Deborah.Broderson@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Amendment of Part 64 of the Commission's Rules Regarding Telecommunication Relay Services and Related Customer Premises Equipment for Persons with Disabilities; Truth-in-Billing Requirements for Common Carriers,* Order (*Order*), document DA 11–1649, adopted September 30, 2011, and released September 30, 2011. The full text of document DA 11–1649 and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Document DA 11–1649 and copies of subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor, Best Copying and Printing, Inc. (BCPI), at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI at its Web site, *http://www.bcpiweb.com,* or by calling 202–488–5300. Document DA 11–1649 can also be downloaded in Word or Portable Document Format.

(PDF) at: *http://www.fcc.gov/cgb/dro/trs.html#orders.*

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Final Paperwork Reduction Act of 1995 Analysis

Document DA 11–1649 does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Congressional Review Act

The Commission will send a copy of document DA 11–1649 in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act. *See* 5 U.S.C. 801(a)(1)(A).

Synopsis

1. Document DA 11–1649 finds that a provision of Part 64, Subpart F of the Commission's rules regarding the Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities no longer has legal effect. Section 64.604(c)(5)(iii)(J) of the Commission's rules provides that the Commission shall review the Interstate Cost Recovery Plan (the "TRS Fund") and the TRS Fund administrator's performance after two years. The administration of the TRS Fund and the rule mandating a review after an initial two year period became effective July 26, 1993. *See* Telecommunications Relay Services, 58 FR 39671, July 26, 1993 (amending 47 CFR 64.604). Since § 64.604(c)(5)(iii)(J) of the Commission's rules became effective in 1993, the Commission has reviewed the TRS Fund on an annual basis and has modified the plan on several occasions. *See, e.g., Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program,* CG Docket Nos. 03–123 and 10–51, Order, 76 FR 44326, July 25, 2011 (adopting new compensation rates for various forms of TRS to be paid from the TRS Fund for the 2011–12 Fund year and the contribution factor used to determine the amount common carriers must contribute to the Fund). The Commission had also conducted periodic reviews of the administrator's performance. *See Appointment of Telecommunications Relay Services Fund Administrator and Composition of the Interstate TRS Advisory Council,* CC Docket No. 90–571, Memorandum Opinion and Order, 14 FCC Rcd 10553, 10554, paragraphs 10–11 (1999); *Appointment of the Telecommunications Relay Services Fund Administrator and Composition of the TRS Advisory Committee,* CC Docket No. 90–571, Memorandum Opinion and Order, 10 FCC Rcd 7223, 7224, paragraphs 8–9 (1995). As the Commission reviewed the performance of the administrator and the Fund after two years of its promulgation, § 64.604(c)(5)(iii)(J) of the Commission's rules is without current legal effect and thus may be deleted as obsolete.

2. Document DA 11–1649 also finds that a note in Part 64, Subpart Y of the Commission's rules, which establishes Truth-In-Billing Requirements for Common Carriers, no longer has legal effect. The note following the Commission's Truth-In-Billing Requirements, codified at 47 CFR 64.2401 of its rules, indicates that certain provisions of the rule are not effective and have been stayed until amendments to § 64.2401(a), (d), and (e) of the Commission's rules become effective, pending approval by the Office of Management and Budget and the Commission's publication of a document in the **Federal Register** announcing this approval and the effective date of these amended subsections. The amendments to the noted sections were published in the **Federal Register** on July 13, 2000, *see* Truth-In-Billing and Billing Format, 65 FR 43251, July 13, 2000 (amending 47 CFR 64.2401(a), (d), and (e)), and became effective upon approval by the Office of Management and Budget on August 28, 2000. *See* Truth-In-Billing and Billing Format, 65 FR 52048, August 28, 2000 (amending 47 CFR 64.2401(a), (d), and (e)).

3. Accordingly, the stay has been lifted and all provisions of the rule are currently effective. The note indicating that some provisions have been stayed is no longer accurate. For these reasons, the note following § 64.2401 of the Commission's rules is without current legal effect and thus may also be deleted as obsolete.

4. Accordingly, the Commission amends these rules by deleting these provisions that no longer have any legal effect. The rule amendments adopted in document DA 11–1649 and set forth herein are nonsubstantive, editorial revisions of the rules under 47 CFR 0.231(b) of the Commission's rules. The Commission therefore finds good cause to conclude that notice and comment procedures are unnecessary and would not serve any useful purpose. *See* 5 U.S.C. 553(b)(3)(B). Because the rules being deleted are obsolete and without current legal effect, the Commission also finds good cause to make these nonsubstantive, editorial revisions of the rules effective October 13, 2011. *See* 5 U.S.C. 553(d)(3).

Regulatory Flexibility Act

Because Document DA 11–1649 was adopted without notice and comment, *see* 5 U.S.C. 553(b)(3)(B), the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* does not apply.

Ordering Clauses

It is ordered that, effective October 13, 2011, Part 64 of the Commission's rules is amended, as set forth herein, pursuant to the authority contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), and § 0.231(b) of the Commission's regulations, 47 CFR 0.231(b).

The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will not send a copy of document DA 11–1649 or Regulatory Flexibility Act documents to the Chief Counsel for Advocacy of the Small Business Administration because the Regulatory Flexibility Act does not apply.

List of Subjects in 47 CFR Part 64

Individuals with disabilities, Telecommunications, Telephone.

Federal Communications Commission.

Joel Gurin,

Chief, Consumer and Governmental Affairs Bureau.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 254(k), 227; secs. 403(b)(2)(B), (c), Pub. L. 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 225, 226, 228, 254(k), and 620, unless otherwise noted.

§ 64.604 [Amended]

■ 2. In § 64.604, remove and reserve paragraph (c)(5)(iii)(J).

§ 64.2401 [Amended]

■ 3. In § 64.2401, remove the "Note to § 64.2401".

[FR Doc. 2011–26515 Filed 10–12–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 0907271173–0629–03]

RIN 0648–XA686

Snapper-Grouper Fishery of the South Atlantic; Closure of the 2011–2012 Recreational Sector for Black Sea Bass in the South Atlantic

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS closes the recreational sector for black sea bass in the portion of the exclusive economic zone (EEZ) of the South Atlantic through 35°15.19′ N. lat., the latitude of Cape Hatteras Light, North Carolina. NMFS has determined that the recreational annual catch limit (ACL) for black sea bass has been reached. This closure is necessary to protect the black sea bass resource.

DATES: The closure is effective 12:01 a.m., local time, October 17, 2011, until 12:01 a.m., local time, on June 1, 2012.

FOR FURTHER INFORMATION CONTACT: Catherine Bruger, telephone 727–824–5305, fax 727–824–5308, e-mail *Catherine.Bruger@noaa.gov*.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. These regulations set the recreational ACL for black sea bass in the South Atlantic at 409,000 lb (185,519 kg), gutted weight. However, NMFS published a temporary rule on October 4, 2011, which implemented a reduced recreational ACL beginning October 4, 2011, for the 2011–2012 fishing year (76 FR 61285) due to an ACL overage in the recreational sector of 67,253 lb (30,505 kg), gutted weight in the 2010–2011 fishing year. Therefore, the 2011–2012 recreational ACL for black sea bass in the South Atlantic is now 341,747 lb (155,014 kg), gutted weight, effective October 4, 2011, through May 31, 2012.

Background

Black sea bass are managed throughout their range. In the South Atlantic EEZ, black sea bass are managed by the Council from 35°15.19′ N. lat., the latitude of Cape Hatteras Light, North Carolina, south. From Cape Hatteras Light, North Carolina, through Maine, black sea bass are managed jointly by the Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission. Therefore, the closure provisions contained in this notice are applicable to those vessels harvesting or possessing black sea bass from Key West, Florida, through Cape Hatteras Light, North Carolina.

Regulations effective January 31, 2011 (75 FR 82280, December 30, 2010), set the recreational ACL for black sea bass in the South Atlantic EEZ and established accountability measures (AMs), and require NMFS to close the recreational sector for black sea bass when the ACL is reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. The AMs state if black sea bass are overfished and if recreational landings reach or are projected to reach the recreational ACL of 341,747 lb (155,014 kg), gutted weight, the Assistant Administrator for Fisheries, NOAA (AA), will close the recreational sector for black sea bass for the remainder of the fishing year (50 CFR 622.49(b)(5)(ii). On, and after, the effective date of the closure, the bag and possession limit of black sea bass in or from the South Atlantic EEZ is zero. This zero bag and possession limit also applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, i.e., in State or Federal waters.

Based on current statistics, NMFS has determined that the recreational ACL of 341,747 lb (155,014 kg), gutted weight, for black sea bass has been reached. Accordingly, NMFS is closing the recreational sector for black sea bass in the portion of the South Atlantic EEZ through Cape Hatteras Light, North Carolina, from 12:01 a.m., local time, October 17, 2011, until 12:01 a.m., local time, on June 1, 2012. In order to announce this closure and provide relevant information to interested parties, NMFS will contact state marine fishery agencies and fish houses, announce the closure on NOAA Weather Radio, and distribute a fishery bulletin to provide additional notice to the recreational fishermen. The closure is intended to prevent overfishing and increase the likelihood that the current recreational ACL will not be exceeded even further.

Classification

This action responds to the best scientific information available recently obtained from the fishery. Black sea bass are overfished and are currently in a rebuilding plan, and exceeding the ACLs could jeopardize the rebuilding plan. The AA finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such prior notice and opportunity for public comment is unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule implementing the sector ACL and the associated requirement for closure of the sector when the ACL is met or projected to be met has already been subject to notice and comment, and all that remains is to notify the public of the closure. Allowing prior notice and opportunity for public comment is contrary to the public interest because any additional delay in the closure of the recreational black sea bass sector could result in the recreational ACL being exceeded, which would result in another reduced ACL for the recreational sector in the 2012–2013 fishing season, and would produce additional adverse economic impacts for black sea bass fishermen.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

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

Dated: October 7, 2011.

Steven Thur,

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

[FR Doc. 2011–26499 Filed 10–7–11; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 101126522–0640–02]

RIN 0648–XA759

Pacific Cod by Vessels Harvesting Pacific Cod for Processing by the Inshore Component in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by vessels harvesting Pacific cod for processing by the inshore component in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2011 Pacific total allowable catch (TAC) apportioned to vessels harvesting Pacific cod for processing by the inshore component of the Central Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 9, 2011, through 2400 hrs, A.l.t., December 31, 2011.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679. Regulations governing sideboard protections for GOA groundfish fisheries appear at subpart B of 50 CFR part 680.

The 2011 Pacific cod TAC apportioned to vessels harvesting Pacific cod for processing by the inshore component of the Central Regulatory Area of the GOA is 36,326 metric tons (mt), as established by the final 2011 and 2012 harvest specifications for groundfish of the GOA (76 FR 11111, March 1, 2011).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator) has determined that the 2011 Pacific cod TAC apportioned to vessels harvesting Pacific cod for processing by the inshore component of the Central Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 34,826 mt, and is setting aside the remaining 1,500 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels harvesting Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the directed fishing closure of Pacific cod by vessels harvesting Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 6, 2011.

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

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

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

Dated: October 7, 2011.

Steven Thur,

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

[FR Doc. 2011–26506 Filed 10–7–11; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 76, No. 198
Thursday, October 13, 2011

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[NRC–2011–0237]

Event Reporting Guidelines

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft NUREG; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is requesting comments on Draft NUREG–1022, Revision 3, "Event Reporting Guidelines: 10 CFR 50.72 and 50.73". The NUREG–1022 contains guidelines that the NRC staff considers acceptable for use in meeting the event reporting requirements for operating nuclear power reactors. Revision 3 to NUREG–1022 incorporates revisions to the guidelines for the purpose of clarification.

DATES: Submit comments by December 12, 2011. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Please include Docket ID NRC–2011–0237 in the subject line of your comments. For additional instructions on submitting comments and instructions on accessing documents related to this action, see "Submitting Comments and Accessing Information" in the **SUPPLEMENTARY INFORMATION** section of this document. You may submit comments by any one of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2011–0237. Address questions about NRC dockets to Carol Gallagher, telephone: 301–492–3668; e-mail: *Carol.Gallagher@nrc.gov*.
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

SUPPLEMENTARY INFORMATION:

Submitting Comments and Accessing Information

Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, *http://www.regulations.gov*. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

You 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, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov*. Draft NUREG–1022, Revision 3 may be found in the Agencywide Documents Access and Management System (ADAMS) under Accession No. ML11273A065. The NRC staff has also prepared an accompanying "Discussion of Changes" document that may be found in ADAMS under Accession No. ML11068A030.
- *Federal Rulemaking Web Site:* Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2011–0237.

FOR FURTHER INFORMATION CONTACT: Timothy Kobetz, Reactor Inspection Branch, Division of Inspections and Regional Support, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1932, e-mail: *Timothy.Kobetz@nrc.gov*.

Background

The NUREG–1022 contains guidelines that the NRC staff considers acceptable for use in meeting the reporting requirements of Title 10 of the *Code of Federal Regulations* (10 CFR) 50.72 and 10 CFR 50.73. Revision 3 to NUREG–1022 incorporates revisions to the guidelines for the purpose of clarification. The NRC held a public meeting on June 8 and 9, 2010, with internal and external stakeholders to solicit comments on identified issues with NUREG–1022, Revision 2, as well as to identify new issues (*see* ADAMS Accession Nos. ML101241083 and ML101720219 for additional information). A teleconference meeting with external stakeholders was held on July 19, 2010, to clarify some items listed in the June public meeting summary (see ADAMS Accession No. ML102170301 for additional information). The NRC held another public meeting on October 14, 2010, with internal and external stakeholders to discuss the NRC's disposition of the previously identified items (see ADAMS Accession Nos. ML102630270 and ML102940281 for additional information). In addition, external stakeholders submitted documents to the NRC for consideration. Documents were submitted on July 20, 2010 (ADAMS Accession No. ML101930338), August 8, 2010 (ADAMS Accession No. ML102230269), August 21, 2010 (ADAMS Accession No. ML102360197), and October 29 and November 10, 2010 (ADAMS Accession No. ML103190310). A discussion of the changes in Draft NUREG–1022, Revision 3, may be found in the "Discussion of Changes" document (ADAMS Accession No. ML11068A030). Items in Draft NUREG–

1022, Revision 3, that are underlined are new and not found in Revision 2, and items that have a strikethrough are being deleted from Revision 2. Although the underlines and strikethroughs are included in the draft document, the staff's intention is to remove them upon final publication of NUREG–1022, Revision 3. Any changes in the draft that are not discussed in the "Discussion of Changes" document are to be considered editorial in nature and should not be construed to have any regulatory or technical significance.

Backfit Analysis

The NRC has determined that the Backfit Rule, 10 CFR 50.109, "Backfitting," does not apply to the issuance of the revised guidance in NUREG–1022, Revision 3. The revised guidance in NUREG–1022, Revision 3, addresses compliance with the information collection and reporting requirements in 10 CFR 50.72 and 10 CFR 50.73. The Backfit Rule does not apply to information collection and reporting requirements. Therefore, the NRC has not prepared a backfit analysis for the issuance of Revision 3 to NUREG–1022.

In addition, the NRC has determined that issuance of the revised guidance in NUREG–1022, Revision 3, is not inconsistent with any of the issue finality provisions in 10 CFR part 52, "Licenses, certifications, and approvals for nuclear power plants." Those issue finality provisions do not apply to information collection and reporting obligations imposed on operators of nuclear power plants. In addition, the issue finality provisions in 10 CFR part 52 do not apply to prospective applicants. As of the issuance of this revised guidance, there are no holders of combined licenses under 10 CFR part 52. Hence, there are no entities currently protected by 10 CFR part 52 issue finality provisions relevant to operation (*i.e.*, the period after the Commission has made the finding under 10 CFR 52.103(g)). Therefore, the NRC is not precluded from issuing NUREG–1022, Revision 3, by any of the 10 CFR Part 52 issue finality provisions.

Regulatory Analysis

The NRC performs regulatory analyses to support many NRC actions that affect nuclear power reactor and nonpower reactor licensees. The regulatory analysis process is intended to be an integral part of the NRC's decisionmaking that systematically provides complete disclosure of the relevant information supporting a regulatory decision. The NUREG/BR–0058, Revision 4, "Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission," issued September 2004 (ADAMS Accession No. ML042820192) sets forth the NRC's policy for the preparation and the contents of regulatory analyses. As discussed in Section 2.2 of NUREG/BR–0058, Revision 4, mechanisms used by the NRC staff to establish or communicate generic requirements, guidance, requests, or staff positions that would affect a change in the use of resources by its licensees should include an accompanying regulatory analysis. The changes found in Draft NUREG–1022, Revision 3, can be construed as offering new positions or possibly affecting licensee resources. As a result, the staff determined that it should perform a regulatory analysis in order to provide complete disclosure of the relevant information supporting decisions associated with changes found in Draft NUREG–1022, Revision 3. The regulatory analysis can be found in ADAMS under Accession No. ML11116A168.

Public Comments

This document requests comments from interested members of the public by December 12, 2011. After evaluating the comments received, the staff will either reconsider the proposed change or announce the availability of the change in a subsequent document published in the **Federal Register** (perhaps with some changes as a result of public comments).

Dated at Rockville, Maryland, this 30th day of September 2011.

For the Nuclear Regulatory Commission.

Timothy Kobetz,

Branch Chief, Reactor Inspection Branch, Division of Inspections and Regional Support, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–26419 Filed 10–12–11; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF ENERGY

10 CFR Part 431

RIN 1904–AC62

Efficiency and Renewables Advisory Committee, Appliance Standards Subcommittee, Negotiated Rulemaking Subcommittee/Working Group for Liquid-Immersed and Medium- and Low-Voltage Dry-Type Distribution Transformers

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

ACTION: Notice of open meeting.

SUMMARY: This document announces an open meeting of two Negotiated Rulemaking Working Groups; one concerning Liquid Immersed and Medium-Voltage Dry-Type and the second addressing Low-Voltage Dry-Type Distribution Transformers. The Liquid Immersed and Medium-Voltage Dry-Type Group (MV Group) and the Low-Voltage Dry-Type Group (LV Group) are working groups within the Appliance Standards Subcommittee of the Efficiency and Renewables Advisory Committee (ERAC). The purpose of the MV and LV Groups is to discuss and, if possible, reach consensus on a proposed rule for regulating the energy efficiency of distribution transformers, as authorized by the Energy Policy Conservation Act (EPCA) of 1975, as amended, 42 U.S.C. 6313(a)(6)(C) and 6317(a).

DATES: Tuesday, November 8, 2011; 9 a.m.–6 p.m., Wednesday, November 9, 2011; 9 a.m.–6 p.m.

ADDRESSES: The meeting on November 8, 2011, will be held at the Edison Electric Institute, 701 Pennsylvania Avenue, NW., Washington, DC 20004–2696.

The meeting on November 9, 2011, will be held at the U.S. Department of Energy, 950 L'Enfant Plaza, Room 6097–6098, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: John Cymbalsky, U.S. Department of Energy, Office of Building Technologies (EE–2J), 1000 Independence Avenue, SW., Washington, DC 20585–0121. *Telephone:* (202) 287–1692. *E-mail: John.Cymbalsky@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

Background: DOE has decided to use the negotiated rulemaking process to develop proposed energy efficiency standards for distribution transformers. The primary reasons for using the negotiated rulemaking process for developing a proposed Federal standard is that stakeholders strongly support a consensual rulemaking effort and DOE believes such a regulatory negotiation process will be less adversarial and better suited to resolving the complex technical issues raised by this rulemaking. An important virtue of negotiated rulemaking is that it allows expert dialog that is much better than traditional techniques at getting the facts and issues right and will result in a proposed rule that will effectively reflect Congressional intent.

A regulatory negotiation will enable DOE to engage in direct and sustained dialog with informed, interested, and affected parties when drafting the proposed regulation that is then

presented to the public for comment. Gaining this early understanding of all parties' perspectives allows DOE to address key issues at an earlier stage of the process, thereby allowing more time for an iterative process to resolve issues. A rule drafted by negotiation with informed and affected parties is more likely to maximize benefits while minimizing unnecessary costs than one conceived or drafted without the opportunity for sustained dialog among interested and expert parties. DOE anticipates that there will be a need for fewer substantive changes to a proposed rule developed under a regulatory negotiation process prior to the publication of a final rule.

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

Purpose of the Meeting: To continue the process of seeking consensus on a proposed rule for setting standards for the energy efficiency of liquid immersed and medium- and low-voltage dry type distribution transformers, as authorized by the Energy Policy Conservation Act (EPCA) of 1975, as amended; 42 U.S.C. 6313(a)(6)(C) and 6317(a).

Tentative Agenda: The MV Group will meet at 9:00 a.m. and will conclude at 6 p.m. on Tuesday, November 8, 2011. The LV Group will meet at 9 a.m. through 6 p.m. on Wednesday, November 9, 2011. The tentative agenda for the meetings includes continued discussion regarding the analyses of alternate standard levels and negotiation efforts to address the perceived issues.

Public Participation: Members of the public are welcome to observe the business of the meetings and to make comments related to the issues being discussed at appropriate points, when called on by the moderator. The facilitator will make every effort to hear the views of all interested parties within limits required for the orderly conduct of business. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, e-mail *erac@ee.doe.gov*. Please include "MV and LV Work Group 110811" in the subject line of the message. Please be sure to specify which working group discussion you will be attending. In the e-mail, please provide your name, organization, citizenship and contact information. Space is limited.

Participation in the meeting is not a prerequisite for submission of written comments. ERAC invites written comments from all interested parties. If you would like to file a written statement with the committee, you may do so either by submitting a hard or electronic copy before or after the meeting. Electronic copy of written statements should be e-mailed to *erac@ee.doe.gov*.

Minutes: The minutes of the meeting will be available for public review at *http://www.erac.energy.gov*.

Issued in Washington, DC, on October 5, 2011.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011–26479 Filed 10–12–11; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL ELECTION COMMISSION

11 CFR Part 110

[Notice 2011–14]

Internet Communication Disclaimers

AGENCY: Federal Election Commission.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: The Federal Election Commission requests comments on whether to begin a rulemaking to revise its regulations concerning disclaimers on certain Internet communications and, if so, what changes should be made to those rules. The Commission intends to review the comments received as it decides what revisions, if any, it will propose making to these rules.

DATES: Comments must be received on or before November 14, 2011. The Commission will determine at a later date whether to hold a public hearing on this Notice. If a hearing is to be held, the Commission will publish a notice in the **Federal Register** announcing the date and time of the hearing.

ADDRESSES: All comments must be in writing. Comments may be submitted electronically via the Commission's Web site at *http://www.fec.gov/fosers*. Commenters are encouraged to submit comments electronically to ensure timely receipt and consideration. Alternatively, comments may be submitted in paper form. Paper comments must be sent to the Federal Election Commission, Attn.: Amy L. Rothstein, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463. All comments must include the full name and postal service address of the commenter, and of each commenter if filed jointly, or they will not be considered. The Commission will post comments on its Web site at the conclusion of the comment period.

FOR FURTHER INFORMATION CONTACT: Ms. Amy L. Rothstein, Assistant General Counsel, or Ms. Jessica Selinkoff, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Federal Election Commission is publishing this Advance Notice of Proposed Rulemaking seeking comments on whether and how the Commission should revise its rules at 11 CFR 110.11 regarding disclaimers on Internet communications. Specifically, the Commission is considering whether to modify the disclaimer requirements for certain Internet communications, or to provide exceptions thereto, consistent with the Federal Election Campaign Act, 2 U.S.C. 431 *et seq.*, as amended ("the Act"). In the event the Commission adopts a final rule on this issue, given the timeframe of the current election cycle, the Commission does not anticipate the rule would become effective for the 2011–2012 election cycle.

1. Current Statutory and Regulatory Framework

Under the Act and Commission regulations, a "disclaimer" is a statement that must appear on certain communications to identify who paid for them and, where applicable, whether the communications were authorized by a candidate. 2 U.S.C. 441d(a); 11 CFR 110.11. *See also* Explanation and Justification for Final Rules on Disclaimers, Fraudulent Solicitations, Civil Penalties, and Personal Use of Campaign Funds, 67 FR 76962, 76962 (Dec. 13, 2002) ("2002 Disclaimer E&J").[1] With some exceptions, the Act and Commission regulations require disclaimers for public communications: (1) Made by a political committee; (2) that expressly advocate the election or defeat of a clearly identified Federal candidate; or (3) that solicit a contribution. 2 U.S.C. 441d(a); 11 CFR 110.11(a). In addition to public communications by political committees, "electronic mail of more than 500 substantially similar communications when sent by a political committee * * * and all Internet Web sites of political committees available to the general public" also must have disclaimers. 11 CFR 110.11(a).

While the term "public communication" generally does not include Internet communications, it does include "communications placed for a fee on another person's Web site."

[1] Documents related to Commission rulemakings are available at *http://www.fec.gov/fosers*.

11 CFR 100.26. Thus, communications placed for a fee on another person's Web site are subject to the disclaimer requirements. *See* 11 CFR 110.11(a).

The content of the disclaimer that must appear on a given communication depends on who authorized and paid for the communication. If a candidate, an authorized committee of a candidate, or an agent of either pays for and authorizes the communication, then the disclaimer must state that the communication "has been paid for by the authorized political committee." 11 CFR 110.11(b)(1); *see also* 2 U.S.C. 441d(a)(1). If a public communication is paid for by someone else, but is authorized by a candidate, an authorized committee of a candidate, or an agent of either, then the disclaimer must state who paid for the communication and that the communication is authorized by the candidate, authorized committee of the candidate, or an agent of either. 11 CFR 110.11(b)(2); *see also* 2 U.S.C. 441d(a)(2). If the communication is not authorized by a candidate, an authorized committee of a candidate, or an agent of either, then the disclaimer must "clearly state the full name and permanent street address, telephone number, or World Wide Web address of the person who paid for the communication, and that the communication is not authorized by any candidate or candidate's committee." 11 CFR 110.11(b)(3); *see also* 2 U.S.C. 441d(a)(3). Every disclaimer "must be presented in a clear and conspicuous manner, to give the reader, observer, or listener adequate notice of the identity" of the communication's sponsor. 11 CFR 110.11(c)(1).

Commission regulations contain limited exceptions to the general disclaimer requirements. For example, disclaimers are not required for communications placed on "[b]umper stickers, pins, buttons, pens, and similar small items upon which the disclaimer cannot be conveniently printed." 11 CFR 110.11(f)(1)(i) (the "small items exception"). Nor are disclaimers required for "[s]kywriting, water towers, wearing apparel, or other means of displaying an advertisement of such a nature that the inclusion of a disclaimer would be impracticable." 11 CFR 110.11(f)(1)(ii) (the "impracticable exception"). *See also* Advisory Opinion 2002–09 (Target Wireless).

2. Recent Developments Concerning Internet Advertisements

The Commission recently considered two advisory opinion requests seeking to exempt from the disclaimer requirements, under the small items or impracticable exceptions, certain advertisements placed for a fee on another person's Web site. In the first of these advisory opinion requests, Google, Inc. asked the Commission if it could sell text advertisements consisting of approximately 95 characters to candidates and political committees if those advertisements did not include disclaimers. Google proposed that users would see a disclaimer by clicking on the advertisement and viewing the disclaimer on the advertisement's landing page. *See* Advisory Opinion Request 2010–19 (Google).[2] While the Commission did not agree on the reason for its decision, it concluded that such advertisements were not in violation of the Act. *See* Advisory Opinion 2010–19 (Google).

In the second advisory opinion request on this issue, Facebook asked if its small, character-limited advertisements (ranging from zero to 160 characters) qualified for either the small items or impracticable exception to the disclaimer requirements. *See* Advisory Opinion Request 2011–09 (Facebook). The Commission could not approve an answer by the required four affirmative votes and therefore was unable to render an advisory opinion to Facebook.

In the course of considering these advisory opinion requests, the Commission received one comment from the public urging the Commission to undertake a rulemaking to address the disclaimer requirements in light of technological developments in Internet advertising. The Commission is now considering whether to issue an NPRM to propose amending its rules in this area. The Commission seeks to provide "much needed flexibility to ensure that the regulated community is able to take advantage of rapidly evolving technological innovations, while ensuring that 'necessary precautions' are in place." Advisory Opinion 2007–30 (Dodd); *see also* Advisory Opinion 1999–09 (Bradley) (explaining that it is the Commission's practice to "interpret[] the Act and its regulations in a manner consistent with contemporary technological innovations * * * where the use of the technology would not compromise the intent of the Act or regulations."). The Supreme Court has explained that the disclaimers required by 2 U.S.C. 441d "provide the electorate with information and insure that the voters are fully informed about the person or group who is speaking." *Citizens United* v. *FEC*, 130 S.Ct. 876, 915, 78 U.S.L.W. 4078 (2010) (internal quotations and alterations removed). Given the development and proliferation of the Internet as a mode of political communication, and the expectation that continued technological advances will further enhance the quantity of information available to voters online and through other technological means, the Commission welcomes comments on whether and how it should amend its disclaimer requirements for public communications on the Internet to provide flexibility consistent with their purpose.

3. Commission Regulations Concerning Internet Communications

The Commission has long recognized the vital role of the Internet and electronic communications in election campaigns. The Commission first addressed Internet disclaimers in 1995 when it stated that "Internet communications and solicitations that constitute general public political advertising require disclaimers." *See* Explanation and Justification for Final Rules on Communications Disclaimer Requirements, 60 FR 52069, 52071 (Oct. 5, 1995) ("1995 Disclaimer E&J").

That same year, the Commission considered two advisory opinion requests regarding the application of the Act to Internet solicitations of campaign contributions. *See* Advisory Opinions 1995–35 (Alexander for President) and 1995–09 (NewtWatch). The Commission determined that Internet solicitations are general public political advertisements and, as such, they "are permissible under the [Act] provided that certain requirements, including the use of appropriate disclaimers, are met." Advisory Opinion 1995–35 (NewtWatch).

In 2002, Congress enacted the Bipartisan Campaign Reform Act of 2002, Public Law 107–155, 116 Stat. 81 (2002) ("BCRA"). In BCRA, Congress added new specificity to the disclaimer requirements, expanded the scope of communications covered by the disclaimer requirements, and enacted "stand by your ad" requirements. Congress also added a new definition of the term "public communication." *See* 2 U.S.C. 431(22) and 441d; *see also* 2002 Disclaimer E&J, 67 FR at 76962.

In implementing BCRA, the Commission promulgated a new definition of "public communication" that excluded all communications over the Internet. *See* Explanation and Justification for Final Rules on Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 FR 49064, 49111 (July 29, 2002). The

[2] Documents related to Commission advisory opinions are available at *http://www.fec.gov/searchao.*

Commission also promulgated new rules to implement BCRA's changes to the disclaimer provisions of the Act. *See* 2002 Disclaimer E&J, 67 FR at 76962. The new rules applied disclaimer requirements to political committee Web sites and the distribution of more than 500 substantially similar unsolicited e-mails. Other than these two specific types of Internet-based activities, however, Internet communications were not subject to the disclaimer requirements. *Id.* at 76963–64.

The Commission adopted its current rules governing Internet communications in 2006 in response to the decision of the U.S. District Court for the District of Columbia in *Shays* v. *FEC*. *See Shays* v. *FEC*, 337 F.Supp.2d 28 (D.D.C. 2004) ("*Shays I*"); *see also* Explanation and Justification for Final Rules on Internet Communications, 71 FR 18589, 18589 (Apr. 12, 2006) ("2006 Internet E&J"). That decision held, among other things, that the Commission could not wholly exclude Internet activity from the definition of "public communication."

Following the *Shays I* decision, the Commission added "Internet communications placed on another person's Web site for a fee" to the regulatory definition of "public communication." *See* 11 CFR 100.26. Under the new definition, "when someone such as an individual, political committee, labor organization or corporation pays a fee to place a banner, video, or pop-up advertisement on another person's Web site, the person paying makes a 'public communication.'" 2006 Internet E&J at 18594. Furthermore, "the placement of advertising on another person's Web site for a fee includes all potential forms of advertising, such as banner advertisements, streaming video, popup advertisements, and directed search results." *Id.* At the same time, however, the Commission confirmed that the "vast majority of Internet communications * * * remain free from campaign finance regulation." *Id.* at 18590. Because the disclaimer requirement "incorporate[d] the revised definition of 'public communication,'" Internet communications placed for a fee on another person's Web site became subject to the disclaimer requirement. *Id.* at 18589–90; *see also id.* at 18594.

4. Possible Revisions to Commission Regulations

The Commission invites comments that address the ways that campaigns, political committees, voters, and others are using, or may soon use, the Internet and other technologies, including applications for mobile devices ("apps"), to disseminate and receive campaign and other electoral information. The Commission also invites commenters to address the ways in which the Internet and other technologies present challenges in complying with the disclaimer requirements under the existing rules.

The Commission is interested in comments that address possible modifications, such as by technological alternatives, to the current disclaimer requirements. For example, the California Fair Political Practices Commission ("CFPPC") recently amended its regulations regarding paid campaign advertisements to address the issue of disclaimers in electronic media advertisements that are limited in size. *See* Cal. Code Regs. tit. 2, sec. 18450.4 (effective December 2010). Instead of exempting all small communications from the disclaimer requirements, CFPPC's new regulation provides that small advertisements may use technological features such as rollover displays, links to a Web page, or "other technological means" to meet the requirements. *Id.* at sec. 18450.4(b)(3)(G)(1). The California regulation contains the following examples of "limited" size advertisements: a "micro bar," a "button ad," a paid text advertisement under 500 characters, or a small picture or graphic link. *Id.* The California regulation further provides that, "In electronic media advertisements whose size, space, or character limit constraints (*i.e.*, SMS text message) render it impracticable to include the full disclosure information * * * the candidate or committee sending the mass mailing may provide abbreviated advertisement disclosure containing at least the committee's [Fair Political Practices Commission number] and when technologically possible a link to the Web page on the Secretary of State's Web site displaying the committee's campaign finance information, if applicable." *Id.* at sec. 18450.4(b)(3)(G)(4). Should the Commission consider abbreviated advertisement disclosure for Internet advertisements? The Commission invites comments that explore the technological and physical characteristics that would define a "small" Internet advertisement.

In the Google and Facebook advisory opinion requests discussed above, the facts indicated that some Internet advertisements link to a Web site or Web page that contains a disclaimer that complies with the Act and Commission regulations. Should the Commission consider allowing such a link, by itself, to satisfy the disclaimer requirement? If so, how should the Commission approach disclaimer requirements for links in advertisements that direct persons to Web sites without disclaimers or to Web sites owned or operated by persons other than the person paying for the advertisement?

The Commission is also interested in commenters' data or experiences in purchasing, selling, or distributing small or character-limited advertisements online. The Commission is interested in comments relating to the appropriate application of either the small items or impracticable exception from the disclaimer requirements to small or character-limited Internet advertisements. The Commission is also interested in comments addressing the possibility of developing a new exception for small or character-limited Internet advertisements that might be more appropriate for the medium than the existing regulatory exceptions. The Commission is interested in learning what proportion of Internet political advertising might be affected by such a disclaimer exception. The Commission is also interested in comments addressing what role Internet media providers' usual and normal advertising model should play in the Commission's consideration of disclaimer requirements.

Finally, the Commission welcomes comments on any other aspect of the issues addressed in this Notice. Given the speed at which technological advances are developing, the Commission welcomes comments that address possible regulatory approaches that might minimize the need for serial revisions to the Commission's rules in order to adapt to new or emerging Internet technology in the future. Additionally, the Commission invites comment on whether there are other regulations that the Commission should consider revising in light of new or emerging Internet technology.

Dated: October 6, 2011.

On behalf of the Commission.

Cynthia L. Bauerly,

Chair, Federal Election Commission.

[FR Doc. 2011–26414 Filed 10–12–11; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL ELECTION COMMISSION

11 CFR Part 111

[Notice 2011–15]

Agency Procedure Following the Submission of Probable Cause Briefs by the Office of General Counsel

AGENCY: Federal Election Commission.

ACTION: Notice of agency procedure.

SUMMARY: The Federal Election Commission is establishing an agency procedure to formalize the agency's practice in the latter stages of Probable Cause process in enforcement matters brought under the Federal Election Campaign Act of 1971, as amended (FECA).

DATES: Effective October 28, 2011.

FOR FURTHER INFORMATION CONTACT: Kathleen Guith, Acting Associate General Counsel, or Joshua Smith, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Election Commission (Commission) is establishing an agency procedure to formalize the agency's practice in the latter stages of the Probable Cause process when, pursuant to 11 CFR 111.16(d) of the Commission's regulations, the Office of General Counsel (OGC) advises the Commission in writing as to whether or not it intends to proceed with a Probable Cause recommendation.

In matters that proceed beyond the stage in which the Commission has determined there is reason to believe that a violation has occurred or is about to occur, and after the completion of any investigation, both the FECA, 2 U.S.C. 437g(a)(3), and the Commission's regulations, 11 CFR 111.16(a), require OGC to make a recommendation to the Commission on whether or not to find probable cause to believe that a violation has occurred or is about to occur.

When OGC makes its recommendation on whether or not the Commission should find probable cause, such recommendation is accompanied by a brief (Probable Cause Brief) supporting the recommendation. A copy of the Probable Cause Brief is provided to each respondent. 11 CFR 111.16(b). The Probable Cause Brief must comport with the disclosure procedures adopted by the Commission on June 2, 2011. *See* Agency Procedure for Disclosure of Documents and Information in the Enforcement Process, 76 FR 34986 (June 15, 2011).

Once the Probable Cause Brief is received by a respondent, the respondent has the opportunity to file, within 15 days, a brief (Reply Brief) responding to the Probable Cause Brief. 11 CFR 111.16(c). Additionally, pursuant to a procedural rule adopted by the Commission in 2007, a respondent may, as part of the Reply Brief, request a probable cause hearing (Probable Cause Hearing) before the Commission. *See* Procedural Rules for Probable Cause Hearings, 72 FR 64919 (Nov. 19, 2007). The Commission will grant a request for a Probable Cause Hearing if any two Commissioners agree that a hearing would help resolve significant or novel legal issues, or significant questions about the application of the law to the facts.

Following the filing of the Reply Brief and the Probable Cause Hearing, if there is one, OGC must, pursuant to 11 CFR 111.16(d), then advise the Commission, by a written notice (OGC Notice), as to whether OGC intends to proceed with its recommendation or to withdraw the recommendation from Commission consideration.

The Commission hereby adopts the following procedures with respect to the following issues: (a) Whether or not OGC must provide a copy of the OGC Notice to the respondent and (b) if the OGC Notice contains any new argument, statement, or facts, or contains new replies to all or any of the arguments contained in the Reply Brief, and, if a Probable Cause Hearing was conducted, those occurring at the hearing, whether the respondent should have an opportunity to reply.

II. Procedure Following the Submission of Probable Cause Briefs by the Office of General Counsel

1. The OGC Notice provided to the Commission by OGC following the Reply Brief (or if there was a Probable Cause Hearing, following the hearing), *see* 11 CFR 111.16(d), shall contemporaneously be provided to the respondent.

2. The OGC Notice may include information that replies to, or argues facts or law in response to, the respondent's Reply Brief, or arising out of the Probable Cause Hearing, if any.

3. If the OGC Notice contains new facts or new legal arguments raised by OGC and not contained in the Probable Cause Brief, or raised at the Probable Cause Hearing, if any, the respondent may submit a written request to address the new points raised by OGC. Any such written request must specify the new points that the respondent seeks to address and must be submitted to the Secretary of the Commission within five business days of the respondent's receipt of the OGC Notice.

4. Within five business days of receipt of a written request from a respondent, the Commission may, in its sole discretion, exercised by four affirmative votes, allow the respondent to address in writing the new points raised by the OGC Notice. If the Commission approves the request, the Commission shall provide the respondent with a date by which the Supplemental Reply Brief must be filed, which shall in no event exceed 10 calendar days from notification to the respondent of the Commission's approval. Where necessary, the Commission reserves the right to request from a Respondent an agreement tolling any deadline, including any statutory or other deadline found in 11 CFR part 111. Any request that is not approved by the Commission within five business days of the Commission's receipt of the request shall be deemed denied without further action by the Commission.

5. All requests and Supplemental Reply Briefs should be directed to the Commission Secretary via e-mail (*secretary@fec.gov*) or fax (202–208–3333). Upon receipt of a request, the Commission Secretary shall forward the request or brief to each Commissioner and the General Counsel. Absent good cause, to be determined at the sole discretion of the Commission, exercised by four affirmative votes, late requests will not be accepted.

III. Conclusion

Failure to adhere to this procedure does not create a jurisdictional bar for the Commission to pursue all remedies to correct or prevent a violation of the Act.

This notice establishes agency practices or procedures. This procedure sets forth the Commission's intentions concerning the exercise of its discretion in its enforcement program. However, the Commission retains that sole discretion and may or may not exercise it as appropriate with respect to the facts and circumstances of each enforcement matter it considers, with or without notice. Consequently, this procedure does not bind the Commission or any member of the general public, nor does it create any rights for respondents or third parties. As such, this notice does not constitute an agency regulation requiring notice of proposed rulemaking, opportunities for public participation, prior publication, and delay of effective date under 5 U.S.C. 553 of the Administrative Procedure Act (APA). The provisions of the Regulatory Flexibility Act, 5 U.S.C. 605(b), which apply when notice and

comment are required by the APA or another statute, are not applicable.

Dated: October 6, 2011.

On behalf of the Commission.

Cynthia L. Bauerly,

Chair, Federal Election Commission.

[FR Doc. 2011–26415 Filed 10–12–11; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0199; Directorate Identifier 2011–CE–005–AD]

RIN 2120–AA64

Airworthiness Directives; Eclipse Aerospace, Inc. Airplanes Equipped With Pratt & Whitney Canada, Corp. PW610F–A Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to revise an existing airworthiness directive (AD) that applies to all Eclipse Aerospace, Inc. Model EA500 airplanes equipped with Pratt & Whitney Canada, Corp. (P&WC) Model PW610F–A engines. The existing AD currently requires incorporating an operating limitation of a maximum operating altitude of 30,000 feet into Section 2, Limitations, of the airplane flight manual (AFM). Since we issued that AD, P&WC has developed a design change for the combustion chamber liner assembly. This proposed AD would retain the requirements of the current AD, clarify the engine applicability, and allow the option of incorporating the design change to terminate the current operating limitation and restore the original certificated maximum operating altitude of 41,000 feet. We are proposing this AD to correct the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by November 28, 2011.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

For service information identified in this AD, contact Pratt & Whitney Canada, 1000 Marie-Victorin Blvd., Longueuil, Quebec, J4G 1A1 Canada; *telephone:* (800) 268–8000; *Internet: http://www.P&WC.ca.* 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 proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (*phone:* 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2011–0199; Directorate Identifier 2011–CE–005–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

On March 3, 2011, we issued AD 2011–06–06, amendment 39–16631 (76 FR 13078, March 10, 2011), for all Eclipse Aerospace, Inc. Model EA500 airplanes equipped with Pratt & Whitney Canada, Corp. (P&WC) Model PW610F–A engines. That AD superseded AD 2008–24–07, amendment 39–15747 (73 FR 70866, November 24, 2008) and requires incorporating an operating limitation of a maximum operating altitude of 30,000 feet into Section 2, Limitations, of the AFM. That AD resulted from several incidents of engine surge due to hard carbon build up blocking the static vanes at maximum operating altitude of 37,000 feet. We issued that AD to prevent hard carbon buildup on the static vane, which could result in engine surges. Engine surges may result in a necessary reduction in thrust and decreased power for the affected engine. In some cases, this could result in flight and landing under single-engine conditions.

Actions Since Existing AD Was Issued

Since we issued AD 2011–06–06, amendment 39–16631 (76 FR 13078, March 10, 2011), P&WC has issued a new service bulletin that incorporates a design change to the combustion chamber liner assembly. The current design of the combustion chamber liner assembly is a one-piece configuration. The new design change involves replacing the combustion chamber liner assembly with one that has inner and outer liner assemblies that are held by cast heat shields.

Upon replacing the combustion chamber liner assembly on both engines with the new design combustion chamber assemblies, the operating limits of the airplane can be restored to the original certificated maximum operating altitude of 41,000 feet.

We have been informed that all new P&WC Model PW610F–A engines manufactured for new production Eclipse Aerospace, Inc. Model EA500 airplanes will incorporate the new combustion chamber liner assembly. The serial numbers for these new engines will start after PCE–LA0583. Therefore, to make it clear that this proposed AD will not be applicable to the new production airplanes, we need to clarify the engine applicability to include an end serial number.

Relevant Service Information

We reviewed Pratt & Whitney Canada Service Bulletin P&WC S.B. No. 60077, dated June 1, 2011. The service information describes procedures for

replacing the turbofan engine combustion chamber liner assembly with one that has inner and outer liner assemblies that include heat shields.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would retain all requirements of AD 2011–06–06, amendment 39–16631 (76 FR 13078, March 10, 2011). This proposed AD would also clarify the engine applicability and allow the option of incorporating Pratt & Whitney Canada Service Bulletin P&WC S.B. No. 60077, dated June 1, 2011, to terminate the operating limitations set in AD 2011–06–06 and restore the original certificated altitude of 41,000 feet.

Costs of Compliance

We estimate that this proposed AD affects 259 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS (RETAINED FROM AD 2011–06–06, AMENDMENT 39–16631 (76 FR 13078, MARCH 10, 2011)

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Incorporate operating limitations of maximum operating altitude of 30,000 feet into Section 2, Limitations, of the AFM.	1 work-hour × $85 per hour = $85	Not Applicable	$85	$22,015

The cost presented above is a cost estimate only. A person holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may insert the AFM change.

ESTIMATED COSTS

[Optional action]

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Incorporation of Pratt & Whitney Canada Service Bulletin P&WC S.B. No. 60077, dated June 1, 2011, on both engines.	20 work-hours × $85 per hour = $1,700 for both engines.	$236,610 for both engines.	$238,310 for both engines.	$61,722,290 for both engines.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2011–06–06, amendment 39–16631 (76 FR 13078, March 10, 2011), and adding the following new AD:

Eclipse Aerospace, Inc. Model EA500 Airplanes Equipped With Pratt & Whitney Canada, Corp. Model PW610F–A Engines: Docket No. FAA–2011–0199; Directorate Identifier 2011–CE–006–AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by November 28, 2011.

(b) Affected ADs

This AD revises AD 2011–06–06, amendment 39–16631 (76 FR 13078, March 10, 2011).

(c) Applicability

This AD applies to Model EA500 airplanes, all serial numbers, that are:

(1) equipped with Pratt & Whitney Canada, Corp. Model PW610F–A engines, all serial numbers up to and including serial number PCE–LA0583; and

(2) certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 72, Engine.

(e) Unsafe Condition

This AD was prompted by several incidents of engine surge. We are issuing this AD to prevent hard carbon buildup on the static vane, which could result in engine surges. Engine surges may result in a necessary reduction in thrust and decreased power for the affected engine. In some cases, this could result in flight and landing under single-engine conditions. It is also possible this could affect both engines at the same time, requiring dual-engine shutdown.

(f) Compliance

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

(g) Action Retained From AD 2011–06–06, Amendment 39–16631 (76 FR 13078, March 10, 2011)

(1) Before further flight after March 21, 2011 (the effective date retained from AD 2011–06–06), incorporate the following language into Section 2, Limitations, of your airplane flight manual (AFM): "Per AD 2011–06–06, LIMIT THE MAXIMUM OPERATING ALTITUDE TO 30,000 FEET (9144M) PRESSURE ALTITUDE."

(2) A person holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may insert the operating limitations into Section 2, Limitations, of the AFM. Make an entry into the aircraft logbook showing compliance with this portion of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(3) You may incorporate paragraph (g) of this AD into Section 2, Limitations, of your AFM to comply with this AD.

(h) Optional Action To Restore Original Certificated Maximum Operating Altitude

(1) You may, at any time after compliance with paragraph (g) of this AD, on both engines replace the turbofan engine combustion chamber liner assembly with one that has inner and outer liner assemblies that include heat shields. Do the replacements in accordance with Pratt & Whitney Canada Service Bulletin P&WC S.B. No. 60077, dated June 1, 2011. This includes the change to the weight and balance in paragraph 1.H. in the service bulletin.

(2) Before further flight after doing the replacement specified in paragraph (h)(1) of this AD, remove the limitation required in paragraph (g)(1) of this AD.

(3) Within 30 days after doing the replacement specified in paragraph (h)(1) of this AD or within 30 days after the effective date of this AD, whichever occurs later, send a memo or email to Eric Kinney at the address specified in paragraph (k)(1) of this AD notifying him of the completion of the replacement. In this notification, include the airplane serial number, engine serial numbers, and time-in-service (TIS) hours at the time of replacement.

(i) Paperwork Reduction Act Burden Statement

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

(j) Alternative Methods of Compliance (AMOCs)

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

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

(3) AMOCs approved for AD 2011–06–06, amendment 39–16631 (76 FR 13078, March 10, 2011) are approved as AMOCs for this AD.

(k) Related Information

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

(2) For service information identified in this AD, contact Pratt & Whitney Canada, 1000 Marie-Victorin Blvd., Longueuil, Quebec, J4G 1A1 Canada; *telephone:* (800) 268–8000; *Internet: http://www.P&WC.ca.* 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.

Issued in Kansas City, Missouri, on October 6, 2011.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–26478 Filed 10–12–11; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229 and 249

[Release No. 34–65508; File No. S7–40–10]

Roundtable on Issues Relating to Conflict Minerals

AGENCY: Securities and Exchange Commission.

ACTION: Notice of roundtable discussion; request for comment.

SUMMARY: On October 18, 2011, the Commission will hold a public roundtable at which invited participants will discuss various issues related to the Commission's required rulemaking under Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act"), which relates to reporting requirements regarding conflict minerals originating in the Democratic Republic of the Congo and adjoining countries. Roundtable panelists are expected to reflect the views of different constituencies, including investors, affected issuers, human rights organizations, and other stakeholders.

The roundtable will consist of a series of panels that are designed to provide a forum for various stakeholders to exchange views and provide input on issues related to the Commission's required rulemaking.

DATES: The roundtable discussion will take place on October 18, 2011. The Commission will accept comments regarding the issues to be addressed in the roundtable and otherwise regarding the proposed rule amendments until November 1, 2011.

ADDRESSES: The roundtable discussion will be held in the auditorium of the SEC's headquarters at 100 F Street, NE., Washington, DC on October 18, 2011 from 12:30 p.m. to approximately 5:15 p.m. The roundtable will be open to the public with seating on a first-come, first-served basis, and the discussion will also be available via webcast on the Commission's Web site at *http://www.sec.gov.* Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form at *http://www.sec.gov/rules/other.shtml;* or
- Send an e-mail to *rule-comments@sec.gov.*

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission,

100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–40–10. This file number should be included on the subject line if e-mail is used. To help process and review your submissions more efficiently, please use only one method. The Commission will post all comments on the Commission's Web site at *http://www.sec.gov*. Comments will also be available for website viewing and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: John Fieldsend, Special Counsel in the Office of Rulemaking, Division of Corporation Finance, at (202) 551–3430, 100 F Street, NE., Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: Section 1502 of the Act amends the Securities Exchange Act by adding new Section 13(p). Section 13(p) requires the Commission to promulgate disclosure and reporting regulations regarding the use of conflict minerals from the Democratic Republic of the Congo and adjoining countries. On December 15, 2010, the Commission proposed rule amendments to implement Exchange Act Section 13(p).[1]

The Commission has been asked to hold a roundtable discussion to facilitate its understanding of the issues surrounding conflict minerals. The Commission believes that additional public input on the proposed rulemaking would be beneficial in light of the particular subject matter.

Dated: October 6, 2011.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–26431 Filed 10–12–11; 8:45 am]

BILLING CODE 8011–01–P

[1] *Conflict Minerals*, Release No. 34–63547; File No. S7–40–10 (Dec. 23, 2010) [75 FR 80948].

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–140280–09]

RIN 1545–BK16

Tax Return Preparer Penalties Under Section 6695; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains a correction to a notice of proposed rulemaking that were published in the **Federal Register** on Tuesday, October 11, 2011. These proposed regulations would modify existing regulations related to the tax return preparer penalties under section 6695 of the Internal Revenue Code. The proposed regulations are necessary to monitor and to improve compliance with the tax return preparer due to diligence requirements of this section.

FOR FURTHER INFORMATION CONTACT: Spence Hanemann, (202) 622–4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking (REG–140280–09) that is the subject of this correction is under section 6695 of the Internal Revenue Code.

Need for Correction

As published October 11, 2011 (76 FR 62689), the notice of proposed regulations (REG–140280–09) contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the notice of proposed rulemaking (REG–140280–09), that was the subject of FR Doc. 2011–26247, is corrected as follows:

1. On page 62689, column 2, in the preamble under the caption **ADDRESSES**, line 14, the language "*www.regulations.gov/Regs*" is corrected to read "*www.regulations.gov/*".

Diane O. Williams,

Federal Register Liaison, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2011–26652 Filed 10–11–11; 4:15 pm]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2010–1001; FRL–9478–5]

Approval and Promulgation of Air Quality Implementation Plans; Indiana; Miscellaneous Metal and Plastic Parts Surface Coating Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the Indiana State Implementation plan (SIP) submitted by the Indiana Department of Environmental Management (IDEM) on November 24, 2010. The SIP revision consists of amendments to 326 Indiana Administrative Code (IAC) 8–2–1 and 326 IAC 8–2–9, the applicability sections for Indiana's miscellaneous metal and plastic parts surface coating rules. These rules are approvable because they satisfy the requirements of the Clean Air Act (CAA) for volatile organic compound (VOC) reasonably available control technology (RACT) rules.

DATES: Comments must be received on or before November 14, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2010–1001 by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: aburano.douglas@epa.gov.*
3. *Fax:* (312) 408–2279.
4. *Mail:* Douglas Aburano, Chief, Control Strategies Section (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Douglas Aburano, Chief, Control Strategies Section (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Environmental

Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6052, *rosenthal.steven@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule, and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register.**

Dated: September 30, 2011.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2011–26340 Filed 10–12–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 93

[EPA–HQ–OAR–2011–0393; FRL–9477–9]

RIN 2060–AR03

Transportation Conformity Rule: MOVES Regional Grace Period Extension

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to extend the grace period before the MOtor Vehicle Emission Simulator model (currently MOVES2010a) is required for regional emissions analyses for transportation conformity determinations ("regional conformity analyses"). This proposal would provide an additional year to the previously established two-year conformity grace period, so that MOVES2010a would not be required for regional conformity analyses until March 2, 2013. This proposal would not affect EPA's previous approval of the use of MOVES in official state air quality implementation plan (SIP) submissions or the existing grace period before MOVES2010a is required for carbon monoxide and particulate matter hot-spot analyses for project-level conformity determinations.

DATES: Written comments on this proposal must be received on or before November 14, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–OAR–2011–0393, by one of the following methods:

- *http://www.regulations.gov:* Follow the online instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov*
- *Fax:* (202) 566–9744
- *Mail:* Air Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2011–0393. Please include a total of two copies.
- *Hand Delivery:* Air Docket, Environmental Protection Agency: EPA West Building, EPA Docket Center (Room 3334), 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. EPA–HQ–OAR–2011–0393. Please include two copies. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2011–0393. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* For additional instructions on submitting comments, go to Section I. of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744 and the telephone number for the Air and Radiation Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Meg Patulski, State Measures and Conformity Group, Transportation and Regional Programs Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734) 214–4842; fax number: (734) 214–4052; e-mail address: *patulski.meg@epa.gov;* or Astrid Larsen, State Measures and Conformity Group, Transportation and Regional Programs Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734) 214–4812; fax number: (734) 214–4052; e-mail address: *larsen.astrid@epa.gov.*

SUPPLEMENTARY INFORMATION: The content of this preamble are listed in the following outline:

Availability of MOVES2010a and Support Materials

Copies of the official version of the MOVES2010a motor vehicle emissions model, along with user guides and supporting documentation, are available on EPA's MOVES Web site: *http://www.epa.gov/otaq/models/moves/index.htm*. Guidance on how to apply MOVES2010a for SIPs and transportation conformity purposes, including "Policy Guidance on the Use of MOVES2010 for State Implementation Plan Development, Transportation Conformity, and Other Purposes" (EPA–420–B–09–046, December 2009) and "Technical Guidance on the Use of MOVES2010 for Emission Inventory Preparation in State Implementation Plans and Transportation Conformity" (EPA–420–B–10–023, April 2010) can be found on the EPA's transportation conformity Web site at: *http://www.epa.gov/otaq/stateresources/transconf/policy.htm*.

I. General Information

A. Does this action apply to me?

Entities potentially regulated by the transportation conformity rule are those that adopt, approve, or fund transportation plans, programs, or projects under title 23 U.S.C. or title 49 U.S.C. Chapter 53. Regulated categories and entities affected by today's action include:

Category	Examples of regulated entities
Local government	Local transportation and air quality agencies, including metropolitan planning organizations (MPOs).
State government	State transportation and air quality agencies.
Federal government	Department of Transportation (Federal Highway Administration (FHWA) and Federal Transit Administration (FTA)).

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this proposal. This table lists the types of entities of which EPA is aware that potentially could be regulated by the transportation conformity rule. Other types of entities not listed in the table could also be regulated. To determine whether your organization is regulated by this action, you should carefully examine the applicability requirements in 40 CFR 93.102. If you have questions regarding the applicability of this action to a particular entity, consult the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. 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.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

3. Docket Copying Costs

You may be required to pay a reasonable fee for copying docket materials.

C. How do I get copies of this proposed rule and other documents?

1. Docket

EPA has established an official public docket for this action under Docket ID No. EPA–HQ–OAR–2011–0393. You can get a paper copy of this **Federal Register** document, as well as the documents specifically referenced in this action, any public comments received, and other information related to this action at the official public docket. See the **ADDRESSES** section for its location.

2. Electronic Access

You may access this **Federal Register** document electronically through EPA's Transportation Conformity Web site at *http://www.epa.gov/otaq/stateresources/transconf/index.htm*. You may also access this document electronically under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the official public docket is available through *http://www.regulations.gov*. You may use *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the electronic public docket. Information claimed as CBI and other information for which disclosure is restricted by statute is not available for public viewing in the electronic public docket. EPA's policy is that copyrighted material will not be placed in the electronic public docket but will be available only in printed, paper form in the official public docket.

To the extent feasible, publicly available docket materials will be made available in the electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in the electronic public docket. Although not all docket materials may be available

electronically, you may still access any of the publicly available docket materials through the docket facility identified in the **ADDRESSES** section. EPA intends to provide electronic access in the future to all of the publicly available docket materials through the electronic public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to the electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in the electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in the electronic public docket along with a brief description written by the docket staff.

For additional information about the electronic public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

II. Background

A. What is transportation conformity?

Transportation conformity is required under Clean Air Act (CAA) section 176(c) (42 U.S.C. 7506(c)) to ensure that transportation plans, transportation improvement programs (TIPs), and federally supported highway and transit projects are consistent with the purpose of the SIP. Conformity to the purpose of the SIP means that transportation activities will not cause or contribute to new air quality violations, worsen existing violations, or delay timely attainment of the relevant national ambient air quality standard (NAAQS) or required interim milestones.

Transportation conformity (hereafter, "conformity") applies to areas that are designated nonattainment, and those areas redesignated to attainment after 1990 ("maintenance areas") for transportation-related criteria pollutants: Ozone, particulate matter ($PM_{2.5}$ and PM_{10}) [1], carbon monoxide (CO), and nitrogen dioxide (NO_2). EPA's conformity rule (40 CFR Parts 51 and 93) establishes the criteria and procedures for determining whether transportation activities conform to the SIP. EPA first promulgated the conformity rule on November 24, 1993 (58 FR 62188) and subsequently published several other amendments. The Department of Transportation (DOT) is EPA's federal partner in implementing the conformity regulation. EPA has coordinated with DOT, and they concur with this proposal.

B. What is MOVES2010a, and how has it been implemented to date?

The MOtor Vehicle Emission Simulator model (MOVES) is EPA's state-of-the-art model for estimating emissions from highway vehicles, based on analyses of millions of emission test results and considerable advances in the Agency's understanding of vehicle emissions. MOVES is currently EPA's official emissions model for state and local agencies to estimate volatile organic compounds (VOCs), nitrogen oxides (NO_X), PM, CO, and other precursors from cars, trucks, buses, and motorcycles for SIP purposes and conformity determinations outside of California. MOVES' database-centered design allows EPA to update emissions data more frequently and allows users much greater flexibility in organizing input and output data.

MOVES2010a is the latest official version of MOVES that EPA has approved for SIP and conformity purposes. EPA originally announced the release of MOVES2010 in the **Federal Register** on March 2, 2010 (75 FR 9411) and subsequently released MOVES2010a on September 8, 2010. MOVES2010a includes minor revisions that enhance model performance and did not significantly affect criteria pollutant emissions results. Since these are minor revisions to MOVES2010, MOVES2010a is not considered a "new model" under section 93.111 of the conformity rule, as described further below.

MOVES2010a is a significant improvement over the previous emissions model, MOBILE6.2,[2] in terms of quality of results and overall functionality. It incorporates the latest emissions data, more sophisticated calculation algorithms, increased user flexibility, new software design, and significant new capabilities. While these changes improve the quality of on-road mobile source inventories, the overall degree of change in the model's function also adds to the start-up time required for the transition from MOBILE6.2 to MOVES2010a.

EPA developed MOVES as a completely new model. Whereas MOBILE6.2 was written in FORTRAN and used simple text files for data input and output, MOVES2010a is written in JAVA and uses a relational database structure in MYSQL to handle input and output as data tables. These changes make MOVES more flexible, and the analysis of new data incorporated within MOVES will enhance state and local agency understanding of how on-road mobile sources contribute to emissions inventories and the relative effectiveness of various control strategies. However, this new model framework has created a significant learning curve for state and local agency staff that are required to use MOVES.[3]

In addition to the challenges of learning new software, state and local agencies also have to make substantial changes in the processes they have developed to create model input and apply model output. While there were incremental changes between each previous version of the MOBILE model, the basic input and output structure of that model was essentially unchanged since the early 1980s. Over time, state and local agencies developed their own methods for incorporating local inputs in MOBILE format and for post-processing MOBILE results for inventory development and air quality modeling. To help state and local agencies with this part of the current transition, EPA created a number of tools that take input data formatted for MOBILE6.2 and convert that data for use in MOVES2010a.

EPA anticipated many of these challenges when it released MOVES. In order to assist in this model transition, EPA and DOT have already provided hands-on MOVES training in many states.[4] Additional MOVES training for regional inventories has been requested, and will continue to be offered for the foreseeable future. EPA continues to provide other technical assistance to state and local agencies via on-going conference calls with user groups, e-mail and phone support, a frequently asked questions web page, and web-based presentations. All of these efforts are helping state and local agencies make the transition to MOVES2010a, and many agencies are making significant progress in applying the model for official purposes. However, other state and local agencies are still developing the technical capacity to use MOVES2010a, and need more time to transition to the model and then evaluate whether SIPs and their motor vehicle emissions budgets, or transportation plans and TIPs, should be

[1] 40 CFR 93.102(b)(1) defines $PM_{2.5}$ and PM_{10} as particles with an aerodynamic diameter less than or equal to a nominal 2.5 and 10 micrometers, respectively.

[2] EPA announced the release of MOBILE6.2 in 2004 (69 FR 28830).

[3] Some states also purchased computers with additional capacity and features for running MOVES.

[4] To date, EPA and DOT staff have provided a 2-day hands-on MOVES course for regional emissions inventories (including regional conformity analyses) at over 30 locations around the country.

revised for future conformity determinations.

C. Why is EPA conducting this rulemaking?

If finalized, today's action would provide additional time that may be critical for nonattainment and maintenance areas to learn and apply MOVES2010a for regional conformity analyses.[5] EPA has been contacted by several state and local transportation and air quality agencies and associations that are concerned that there has not been sufficient transition time for using MOVES2010a in regional conformity analyses. These concerns revolve around the time needed to build technical capacity for using MOVES2010a as well as completing necessary SIP and/or transportation plan/TIP changes to assure conformity in the future. Further details on today's action are provided below.

Today's proposal would not affect EPA's previous approval of MOVES2010a for official SIP submissions developed outside of California.[6] Today's rulemaking would also not affect the existing grace period before MOVES2010a is required for $PM_{2.5}$, PM_{10}, and CO hot-spot analyses for project-level conformity determinations (75 FR 79370). EPA coordinated closely with DOT in developing today's action, and DOT concurs on this proposed rule.

III. Extension of MOVES2010a Regional Conformity Grace Period

A. Background

CAA section 176(c)(1) states that "* * * [t]he determination of conformity shall be based on the most recent estimates of emissions, and such estimates shall be determined from the most recent population, employment, travel, and congestion estimates * * *." To meet this requirement, section 93.111 of the conformity rule requires that conformity determinations be based on the latest motor vehicle emissions model approved by EPA. When EPA approves a new emissions model, EPA consults with DOT to establish a grace period before the model is required for conformity analyses (40 CFR 93.111(b)). EPA must consider many factors when establishing a grace period for conformity determinations (40 CFR 93.111(b)(2)). The length of the grace period will depend on the degree of change in the model and the scope of re-planning likely to be necessary for MPOs in order to assure conformity. The conformity rule provides for a grace period for new emissions models of between three and 24 months (40 CFR 93.111(b)(1)).

In the preamble to the original 1993 conformity rule, EPA articulated its intentions for establishing the length of conformity grace period for a new emissions model (58 FR 62211):

> "EPA and DOT will consider extending the grace period if the effects of the new emissions model are so significant that previous SIP demonstrations of what emission levels are consistent with attainment would be substantially affected. In such cases, states should have an opportunity to revise their SIPs before MPOs must use the model's new emissions factors. EPA encourages all agencies to inform EPA of the impacts of new emissions models in their area, and EPA may pause to seek such input before determining the length of the grace period."

Section 93.111 conformity requirements have not changed since 1993, and have been implemented successfully for many previous model transitions.

On March 2, 2010, EPA announced the official release of MOVES2010 and established a two-year grace period before this model was required for new regional conformity analyses (75 FR 9411). Although the original grace period was established for MOVES2010, EPA clarified in September 2010 that the same grace period for regional conformity analyses also applies to MOVES2010a.[7] EPA based its decision to establish a two-year conformity grace period on the factors under section 93.111(b)(2), and advised areas to use the interagency consultation process to examine the impact of using MOVES in their future regional conformity analyses.

Without further EPA action, MOVES2010a would be required for regional conformity analyses that begin after March 2, 2012. As discussed further in today's action, the special circumstances of the transition from MOBILE to MOVES2010a require a reevaluation of the length of this conformity grace period.

B. Description of Proposed Rule

In today's action, EPA is proposing to provide an additional year before MOVES2010a is required for regional conformity analyses. If finalized, MOVES2010a would be required for new regional conformity analyses that begin after March 2, 2013. State and local agencies outside California would use MOVES2010a for regional conformity analyses earlier than March 2, 2013, if desired, and would be required to do so under limited circumstances such as after MOVES2010a SIP motor vehicle emissions budgets have been found adequate or approved for conformity purposes.

Due to the unique circumstances presented by the transition from MOBILE6.2 to MOVES2010a, EPA is proposing to add a new paragraph (b)(3) to section 93.111 of the conformity rule. This provision would only apply to MOVES2010a and any future minor revisions to this model that EPA releases before March 2, 2013. Such minor revisions would not start a new grace period for regional conformity analyses and could include performance enhancements that reduce MOVES run time or model improvements to reduce errors in operating the model. Any major model updates, such as an update that significantly changes MOVES results for criteria pollutant emissions, would be evaluated separately as a "new model" under conformity rule section 93.111, pursuant to previously established requirements.

Before the end of the extended conformity grace period (March 2, 2013), areas would use the interagency consultation process to examine how MOVES2010a would impact their future MPO transportation plan/TIP conformity determinations. Isolated rural areas would also consider the impact of using MOVES2010a on future regional conformity analyses. If finalized, agencies should carefully consider whether the SIP and its motor vehicle emissions budgets should be revised with MOVES2010a or if transportation plans and TIPs should be revised before the end of the conformity grace period, since doing so may be necessary to ensure conformity in the future.

The proposal would allow regional conformity analyses that are started during the grace period to be based on either MOBILE6.2 or MOVES2010a. If the grace period ended on March 2, 2013, MOVES2010a would become the only approved motor vehicle emissions model for regional conformity analyses outside California at that time. This would mean that all new regional conformity analyses started after the end of the grace period must be based on MOVES2010a, even if the SIP is based

[5] MPOs conduct regional conformity analyses to demonstrate that transportation plans and TIPs are consistent with the air quality purposes of the SIP. Regional conformity analyses are also conducted in "isolated rural nonattainment and maintenance areas" (defined by 40 CFR 93.101).

[6] MOVES is not approved for use in California. EPA approved and announced the latest version of California's EMFAC model (EMFAC2007) for SIP development and regional conformity analyses in that state on January 18, 2008 (73 FR 3464).

[7] See "EPA Releases MOVES2010a Mobile Source Emissions Model Update: Questions and Answers" (EPA–420–F–10–050, August 2010) at: *http://www.epa.gov/otaq/models/moves/MOVES2010a/420f10050.pdf.*

on MOBILE6.2 or earlier versions of MOBILE.

For complete explanations of how MOVES2010a is to be implemented for transportation conformity, including details about using MOVES2010a during the grace period, refer to EPA's existing MOVES policy guidance.[8]

C. Rationale

MOVES2010a is EPA's best tool for estimating criteria pollutant emissions, and it is a significant improvement over previous MOBILE models. State and local agencies have made significant progress to date in using MOVES2010a, and EPA supports these efforts and encourages that they continue. However, as discussed above, challenges related to start-up and model application have been much greater in the transition to MOVES2010a, compared to past transitions between MOBILE model versions. As a result, EPA has determined that a one-year extension of the MOVES2010a grace period is necessary for state and local agencies to complete the current transition. Today's action would ensure that state and local governments have the necessary time to implement the conformity rule as originally intended.

Since 1993, the fundamental purpose of section 93.111(b) of the conformity rule has been to provide a sufficient amount of time for MPOs and other state and local agencies to adapt to using new emissions tools. As discussed above, the transition to a new emissions model for conformity involves more than learning to use the new model and preparing input data and model output. After model start-up is complete, state and local agencies also need to consider how the model affects regional conformity analysis results and whether SIP and/or transportation plan/TIP changes are necessary to assure future conformity determinations. EPA believes that the proposed one-time extension of the current MOVES2010a regional grace period is critical to assure future conformity determinations based on MOVES2010a.

EPA has the discretion to establish an extended grace period for MOVES2010a, and today's action is consistent with CAA section 176(c)(1) requirements. EPA believes that the proposal to provide one additional year is appropriate due to this unique transition from MOBILE6.2 to MOVES2010a. This decision is consistent with the existing conformity criteria in section 93.111(b)(2) of the conformity rule that requires the length of the grace period to be based on "the degree of change in the model and the scope of re-planning likely to be necessary by MPOs in order to assure conformity."

Today's proposal would not delay the use of MOVES2010a in SIP development or slow down past progress toward using the new model for regional conformity analyses. As noted above, many state and local agencies are already learning and applying MOVES2010a. Some are revising existing SIP budgets using the new model, while others may be incorporating MOVES2010a into new maintenance plans or clean data determinations. Under EPA's existing MOVES policy guidance, new or revised SIP budgets must still be based on MOVES2010a. For example, MOVES2010a continues to be required for attainment SIPs for the 2006 24-hour $PM_{2.5}$ NAAQS. Under the proposal, MOVES2010a would also be required for any regional conformity analyses prior to March 2, 2013 if SIP budgets based on MOVES2010 or MOVES2010a are approved or found adequate sooner.[9]

In addition, today's action would not change the current MOVES2010a grace period for new $PM_{2.5}$, PM_{10}, and CO hot-spot analyses for project-level conformity determinations. EPA noted previously that a two-year conformity grace period was necessary to apply MOVES2010a for hot-spot analyses (75 FR 79370). However, the transition to MOVES2010a for project-level hot-spot analyses does not involve the complexity associated with the regional level, where SIP budgets and/or transportation plans/TIPs may need to be revised before regional conformity analyses based on MOVES2010a can be completed.

Finally, in issuing this proposal, EPA is not proposing to proceed pursuant to or reopen as a general matter the process and length of conformity grace periods for future emissions model approvals, which were previously established in 1993 (58 FR 62211). The unique set of circumstances involved in the current transition warrants the proposed additional state and local flexibility before MOVES2010a is required for regional conformity analyses.

IV. Conformity SIPs

The proposed MOVES2010a regional grace period extension would apply on the effective date of a final rule in all nonattainment and maintenance areas. Section 51.390(a) of the conformity rule states that the federal rule applies for the portion of the requirements that are not included in a state's approved conformity SIP.[10] Section 51.390(b) further allows state conformity provisions to contain criteria and procedures that are more stringent than the federal requirements. However, in the case of states with conformity SIPs that include the grace period provision in 40 CFR 93.111(b)(1), EPA concludes that such states did not intend to require a shorter grace period than EPA, in consultation with DOT, believes is needed. Therefore, since the MOVES2010a grace period extension would be a new provision being added to the conformity rule, it is not included in any current state conformity SIP and therefore would apply immediately, if finalized, in all areas pursuant to section 51.390(a).

In addition, section 51.390(c) of the conformity rule requires states to submit a new or revised conformity SIP to EPA within 12 months of the **Federal Register** publication date of final conformity rules in certain situations. States with approved conformity SIPs that are prepared in accordance with current CAA requirements would not be required to submit new conformity SIP revisions under a final rule, since section 93.111 of the conformity rule is not contained in these SIPs. A conformity SIP prepared in accordance with current CAA requirements contains only the state's criteria and procedures for interagency consultation (40 CFR 93.105) and two additional provisions related to written commitments for certain control and mitigation measures (40 CFR 93.122(a)(4)(ii) and 93.125(c)). However, states with approved conformity SIPs that include section 93.111 from a previous rulemaking would be required to submit a SIP revision within 12 months of the publication date of any final rule, although EPA strongly encourages these states to submit a SIP revision with only the three required provisions.[11] A state without an approved conformity SIP would not be required to submit a new conformity SIP

[8] "Policy Guidance on the Use of MOVES2010 for State Implementation Plan Development, Transportation Conformity, and Other Purposes" (EPA–420–B–09–046, December 2009) can be found on the EPA's transportation conformity Web site at: *http://www.epa.gov/otaq/stateresources/transconf/policy.htm.*

[9] See Questions 5, 6, and 11 of "Policy Guidance on the Use of MOVES2010 for State Implementation Plan Development, Transportation Conformity, and Other Purposes" (EPA–420–B–09–046, December 2009).

[10] A conformity SIP is required by the CAA and contains a state's conformity requirements, including the state's specific interagency consultation procedures.

[11] The conformity SIP may contain provisions more stringent than the federal requirements, and in these cases, states would specify this intention in its original conformity SIP submission.

within one year of a final rule, but previous conformity SIP deadlines continue to apply.

For additional information on conformity SIPs, please refer to the January 2009 guidance entitled, "Guidance for Developing Transportation Conformity State Implementation Plans" available on EPA's Web site at: *http://www.epa.gov/otaq/stateresources/transconf/policy/420b09001.pdf.*

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a "significant regulatory action." Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This action would not impose any new information collection burden. The information collection requirements of EPA's existing transportation conformity regulations and the proposed revisions in today's action are already covered by EPA information collection request (ICR) entitled, "Transportation Conformity Determinations for Federally Funded and Approved Transportation Plans, Programs and Projects." OMB has previously approved the information collection requirements contained in the existing regulations at 40 CFR Part 93 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0561. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR Part 9.

C. Regulatory Flexibility Act

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

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

After considering the economic impacts of today's proposed rule on small entities, I certify that this action would not have a significant economic impact on a substantial number of small entities. This proposal would directly affect federal agencies and MPOs that, by definition, are designated under federal transportation laws only for metropolitan areas with a population of at least 50,000. These organizations do not constitute small entities within the meaning of the RFA. Therefore, this proposal would not impose any requirements on small entities.

D. Unfunded Mandates Reform Act (UMRA)

This proposal does not contain a Federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. This rule would merely implement already established law that imposes conformity requirements and would not itself impose requirements that may result in expenditures of $100 million or more in any year. Thus, today's proposal is not subject to the requirements of sections 202 and 205 of the UMRA.

This proposal is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This proposal would not significantly or uniquely impact small governments because it directly affects federal agencies and MPOs that, by definition, are designated under federal transportation laws only for metropolitan areas with a population of at least 50,000.

E. Executive Order 13132: Federalism

This proposal does not have federalism implications. It would not have substantial direct effects on states, on the relationship between the national government and states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The CAA requires conformity to apply in certain nonattainment and maintenance areas as a matter of law, and today's action would merely revise one provision for transportation planning entities in subject areas to follow in meeting their existing statutory obligations. Thus, Executive Order 13132 does not apply to this proposal.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). The CAA requires transportation conformity to apply in any area that is designated nonattainment or maintenance by EPA. Because today's proposal would not significantly or uniquely affect the communities of Indian tribal governments, Executive Order 13175 does not apply to this action.

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

This proposal is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in Executive Order 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This proposal is not a "significant energy action" as defined in Executive Order 13211 (66 FR 18355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency regarding energy. This action is not subject to Executive Order 13211 because it does not have any adverse energy effects.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., material specifications, test methods,

sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposal does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this action would not have disproportionately high and adverse human health or environmental effects on minority or low-income populations. The proposed rule involves a minor revision that provides administrative relief but does not change the conformity rule's underlying requirements for regional conformity analyses.

List of Subjects in 40 CFR Part 93

Administrative practice and procedure, Air pollution control, Carbon monoxide, Clean Air Act, Environmental protection, Highways and roads, Intergovernmental relations, Mass transportation, Nitrogen dioxide, Ozone, Particulate matter, Transportation, Volatile organic compounds.

Dated: October 4, 2011.

Lisa P. Jackson,

Administrator.

[FR Doc. 2011–26346 Filed 10–12–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR Parts 530 and 531

[Docket No. 11–17]

RIN 3072–AC47

Certainty of Terms of Service Contracts and NVOCC Service Arrangements

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission proposes to amend its rules regarding certainty of terms of service contracts and non-vessel-operating common carrier service arrangements. The proposed rule is intended to provide common carriers and their customers with certainty and flexibility if they decide to use long-term contracts that adjust based on a freight rate index that reflects changes in market conditions.

DATES: Comments or suggestions due on or before November 28, 2011.

ADDRESSES: Address all comments concerning this proposed rule to: Karen V. Gregory, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001, Phone: (202) 523–5725.

SUPPLEMENTARY INFORMATION: *Submit Comments:* Submit an original and five (5) copies in paper form, and if possible, send a PDF of the document by e-mail to *secretary@fmc.gov*. Include in the subject line: Docket No. 11–17, Comments on Certainty of Terms of Service Contracts and NSAs.

Background

The Federal Maritime Commission (FMC or Commission) has found that an increasing number of service contracts filed with the Commission reference freight rate indices. These indices include, for example, the China Containerized Freight Index (CCFI), the Shanghai Containerized Freight Index (SCFI), the Drewry Freight Insight Index, and the Transpacific Stabilization Agreement (TSA) Index. The ocean freight rates in these negotiated service contracts adjust in increments based upon the changes in the referenced index levels or their annual or quarterly averages. It appears that some carriers and shippers in the ocean transportation industry are seeking stability through long-term contracts, while trying to preserve flexibility to adjust contract rates reflecting changes in market conditions.

Questions have arisen, however, whether references to these indices in service contracts are consistent with the Commission's current regulations. The Commission's regulations with respect to terms of service contracts and Non-Vessel-Operating Common Carrier (NVOCC) service arrangements (NSAs) state that the terms, if they are not explicitly contained in the contracts, must be "contained in a publication widely available to the public and well known within the industry." 46 CFR 530.8(c)(2), 531.6(c)(2).

The Commission has received inquiries from the industry as to whether certain freight rate indices meet the Commission's standard, particularly its "widely available to the public" requirement. For example, until August 2011, the TSA index was not available to the public, even though some service contracts referenced TSA index before its publication. In addition, CCFI, SCFI, and Drewry indices make their current index levels available to the public without charge, but access to their historical data requires payment of subscription fees that can reach several thousand dollars per year.

As the Commission began to consider whether these service contracts referencing freight indices comport with its regulation, it decided to do a more fundamental assessment of whether the regulation in its current form is more restrictive than is necessary to protect the shipping public and carry out the purposes of the Shipping Act.

When adopting the rules for "[c]ertainty of terms" of service contracts, the Commission recognized that through the Ocean Shipping Reform Act of 1998, Congress intended, by lifting the requirements that tariffs be filed with the Commission, to allow parties to service contracts more freedom and flexibility in their commercial arrangements. *See* 63 FR 71062, 71066 (Dec. 23, 1998). More recently, the President has directed federal agencies to review their regulations and to reduce burdens and promote flexibility where appropriate. *See* Exec. Order 13563, 76 FR 3821 (Jan. 21, 2011); Exec. Order 13579, 76 FR 41587 (Jul. 14, 2011).

Proposed Change

Consistent with Congressional intent and the President's directives in Executive Orders 13563 and 13579, the Commission seeks to revise its regulations so that they are not unnecessarily burdensome and do not impede innovation and flexibility in commercial arrangements, while ensuring continued compliance with the Shipping Act's requirements.

The proposed change would facilitate references to indices in service contracts and NSAs so that contracting parties can

pursue long-term contracts with rates that adjust through an agreed and ascertainable manner. The change will also ensure compliance with two important Shipping Act requirements. First, the Shipping Act requires that a service contract be a "written contract," in which the ocean carrier "commits to a certain rate or rate schedule." 46 U.S.C. 40102(20). In order for a rate or rate schedule to be "certain" in a valid contract that is the product of a meeting of the minds, the rate should be known or easily ascertainable to the contracting parties.

Second, the Shipping Act requires service contracts to be "filed" with the Commission. 46 U.S.C. 40502(b). The Commission believes that both the language and purpose of the Shipping Act's filing requirement would be undermined if contracting parties were permitted to include in service contracts references to unfiled terms, in this case important rate terms, which are not readily available to the Commission. The Commission is especially interested in public comments on the possible methods by which contracting parties could ensure that the information referred to in service contracts is readily available to the Commission. The Commission is also interested in public comments on ways to reduce any impediments to small shippers having the option of index-linked service contracts.

The Commission also proposes the same change to the rule for NSAs, which are NVOCCs' contracts with their shippers and analogous to ocean common carriers' service contracts with their shippers.

Certifications

The Chairman of the Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The proposed rule simply provides parties to service contracts and NVOCC service arrangements more freedom and flexibility in their commercial arrangements and will not adversely affect contracting parties.

This rule is not a "major rule" under 5 U.S.C. 804(2).

List of Subjects in 46 CFR Parts 530 and 531

Freight, Maritime carriers, Reporting and recordkeeping requirements.

For the reasons stated in the supplementary information, the Federal Maritime Commission proposes to amend 46 CFR parts 530 and 531 as follows.

PART 530—SERVICE CONTRACTS

1. The authority citation for part 530 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. 305, 40301–40306, 40501–40503, 41307.

2. Revise § 530.8(c)(2) to read as follows:

§ 530.8 Service contracts.

* * * * *

(c) * * *

(2) Make reference to terms not explicitly contained in the service contract itself unless those terms are readily available to the parties and the Commission.

* * * * *

PART 531—NVOCC SERVICE ARRANGEMENTS

3. The authority citation for Part 531 continues to read as follows:

Authority: 46 U.S.C. 40103.

4. Revise § 531.6(c)(2) to read as follows:

§ 531.6 NVOCC Service Arrangements.

* * * * *

(c) * * *

(2) Make reference to terms not explicitly contained in the NSA itself unless those terms are readily available to the parties and the Commission. Reference may not be made to a tariff of a common carrier other than the NVOCC acting as carrier party to the NSA.

* * * * *

By the Commission.

Karen V. Gregory,

Secretary.

[FR Doc. 2011–26418 Filed 10–12–11; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1241

[Docket No. EP 706]

Reporting Requirements for Positive Train Control Expenses and Investments

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board proposes to amend its rules to require rail carriers that submit to the Board "R–1" reports that identify information on capital and operating expenditures for Positive Train Control (PTC) to break out those expenses so that they can be viewed both as component parts of and separately from other capital investments and expenses. PTC is an automated system designed to prevent train-to-train collisions and other accidents. Rail carriers with traffic routes that carry passengers and/or hazardous toxic-by-inhalation (TIH) or poisonous-by-inhalation (PIH) materials, as so designated under federal law, must implement PTC pursuant to federal legislation. We propose to adopt supplemental schedules to the R–1 to require financial disclosure with respect to PTC to help inform the Board and the public about the specific costs attributable to PTC implementation.

DATES: Comments on this proposal are due by December 12, 2011. Replies are due by January 11, 2012.

ADDRESSES: Comments may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E-FILING link on the Board's Web site, at *http://www.stb.dot.gov*. Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, Attn: Docket No. EP 706, 395 E Street, SW., Washington, DC 20423–0001.

Copies of written comments received by the Board will be posted to the Board's Web site at *http://www.stb.dot.gov* and will be available for viewing and self-copying in the Board's Public Docket Room, Suite 131, 395 E Street, SW., Washington, DC. Copies of the comments will also be available by contacting the Board's Chief Records Officer at (202) 245–0236 or 395 E Street, SW., Washington, DC. 20423–0001.

FOR FURTHER INFORMATION CONTACT: Paul Aguiar, (202) 245–0323. Assistance for the hearing impaired is available through Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: As authorized by 49 U.S.C. 11145, the Board requires large (Class I) [1] rail carriers to submit annual reports,

[1] The Board designates 3 classes of freight railroads based upon their operating revenues, for 3 consecutive years, in 1991 dollars, using the following scale: Class I—$250 million or more; Class II—less than $250 million but more than $20 million; and Class III—$20 million or less. These operating revenue thresholds are adjusted annually for inflation. 49 CFR pt. 1201, 1–1. Adjusted for inflation, the revenue threshold for a Class I rail carrier using 2009 data is $378,774,016. Today, there are 7 Class I carriers.

known as R–1 reports. 49 CFR 1241.11.[2] The R–1 reports contain information about finances and operating statistics for each railroad. These reports "shall contain an account, in as much detail as the Board may require, of the affairs of the rail carrier * * *" 49 U.S.C. 11145(b)(1). Currently, PTC expenditures are incorporated into the R–1 report under the category of "capital investments and expenses"; however, PTC expenditures are not separately broken out.

PTC is a system designed to prevent train-to-train collisions, over-speed derailments, incursions into established work zone limits, and the movement of a train through a switch left in the wrong position. 49 U.S.C. 20157(i)(3). PTC systems may include digital data link communications networks, positioning systems, on-board computers on locomotives, throttle-brake interfaces on locomotives, wayside interface units at switches and wayside detectors, and control center computers.[3] The Rail Safety Improvement Act of 2008 requires Class I rail carriers to implement PTC by December 31, 2015, on mainlines where intercity rail passenger transportation or commuter rail passenger transportation is regularly scheduled, and/or on mainlines over which TIH or PIH, as designated in 49 CFR 171.8, 173.115, and 173.132, are transported. 49 U.S.C. 20157(a)(1). In complying with the Rail Safety Improvement Act of 2008, rail carriers are expected to make expenditures related to installation, operation, and maintenance of PTC.

On October 13, 2010, the Union Pacific Railroad Company (UP), a Class I rail carrier, filed a petition requesting that the Board institute a rulemaking proceeding to adopt supplemental schedules that would require Class I carriers to separately identify PTC expenditures in annual R–1 reports to the Board. On November 2, 2010, the Canadian Pacific Railway Company replied in support of UP's petition and The Fertilizer Institute (TFI) replied in opposition. On November 24, 2010, the Norfolk Southern Railway Company (NSR) late-filed comments in support of UP's petition, and on January 18, 2011, PPG Industries, Inc. (PPG) late-filed comments in opposition. On January 21, 2011, UP responded to PPG's filing.

In *Reporting Requirements for Positive Train Control Expenses & Investments*, EP 706 (STB served Feb. 10, 2011), the Board instituted a rulemaking proceeding in response to UP's petition. The Board also accepted the late-filed comments from NSR and PPG, as well as the reply to a reply filed by UP. However, in that decision, we made no determination about the merits of UP's specific proposal, and stated that we would address the arguments raised by the parties in their filings in a subsequent decision, *i.e.*, this notice.

TFI argues that UP's petition is unnecessary because a pending rulemaking already encompasses UP's request. In *Class I Railroad & Financial Reporting—Transportation of Hazardous Materials*, EP 681 (STB served Jan. 5, 2009), the Board requested comments on "whether and how it should improve its informational tools to better identify and attribute the costs" of transporting hazardous materials. TFI argues that this inquiry encompasses PTC, and that in its comments in that proceeding, the Association of American Railroads (AAR), of which UP is a member, specifically discussed PTC and suggested changes to the Board's accounting and reporting requirements, including some of the same schedules raised by UP in this docket.[4] TFI claims that gathering information on PTC expenses is premature, because we have not yet decided in *Class I Railroad & Financial Reporting—Transportation of Hazardous Materials* whether we will change our accounting practices and how the Board will use such information.

The Board recognizes that PTC expenses fall under the umbrella of the many issues in *Class I Railroad & Financial Reporting—Transportation of Hazardous Materials*. But nothing precludes the Board from extracting from that complex proceeding for more expeditious treatment the relatively straightforward issue of identifying PTC expenses while continuing to consider the remaining issues—including the regulatory uses to which PTC data may be put—separately.

The reporting requirement proposed here—a PTC schedule separate from the R–1 filings currently required—should provide us with important information. PTC expenses and investments, especially in the installation stage, are projected to be high.[5] Class I rail carriers have indicated that they are already incurring PTC-related costs to meet the 2015 deadline for implementing the legislative mandate to install PTC.[6] Moreover, PTC costs carry the distinction of representing a relatively specific set of expenditures prompted directly by legislative mandate. Although we are not here proposing changes to our Uniform Rail Costing System, nor are we doing anything in this proceeding that would change how costs are currently assigned in rate and other proceedings,[7] we ought to be aware of these expenditures. This will help us to identify transportation industry changes that may require attention by the agency and to assist the Board in preparing financial and statistical summaries and abstracts to provide itself, Congress, other government agencies, the transportation industry, and the public with transportation data useful in making regulatory policy and business decisions.

Confidentiality. UP argues that the supplemental schedules regarding specific expenditures on PTC and detailed information regarding TIH and PIH traffic should remain confidential. UP asserts that detailed cost data on PTC-specific investment and expenses is commercially sensitive, and UP is concerned that "line-specific" operating data is a security issue. Nonetheless, R–1 data is not "line-specific," and the proposal here is to collect aggregated PTC expenditures figures. Therefore, UP's concerns about security appear unwarranted, as the operating data does not contain schedules of train movements or other data that could be used to compromise safety.

Tracking Benefits. PPG opposes UP's petition for a rulemaking, but it argues that, if the Board moves forward with a rulemaking proceeding, the Board should broaden the scope of the proceeding to include a reporting

[2] Information about the R–1 report, including the schedules discussed in this rulemaking, past R–1 reports, and a blank R–1 form, is available on the Board's Web site. STB Industry Data, *http://www.stb.dot.gov/stb/industry/econ_reports.html*.

[3] The Federal Railroad Administration (FRA) provides more information online. Federal Railroad Administration, Positive Train Control (PTC), *http://www.fra.dot.gov/pages/784.shtml* (last visited Sept. 28, 2011).

[4] TFI Reply 2.

[5] FRA estimates the total cost of PTC to the industry, including development, equipment, installation, and maintenance, over 20 years will be between $9.55 billion and $13.21 billion. *Positive Train Control Systems*, 75 FR 2,598, 2,684 (Jan. 15, 2010). That estimate may decrease, as FRA has proposed an amendment to its regulations that would likely save the railroad industry certain expenses related to PTC implementation. *Positive Train Control Systems*, 76 FR 52,918 (Aug. 24, 2011).

[6] *See* UP's Pet. 2; A Primer for PTC at CSX, *http://www.csx.com/share/wwwcsx_mura/assets/File/About_CSX/Projects_and_Partnerships/PTC_101.pdf* (last visited Sept. 28, 2011); Press Release, BNSF, BNSF Announces $3.5 Billion Capital Commitment Program, (Feb. 7, 2011).

[7] Having the costs broken out may encourage carriers to seek to recover specific PTC costs in individual cases, but they are already free to do that, and thus this rulemaking does not determine the outcome of disputes over PTC expenses in particular cases or in the broad proceeding in *Class I Railroad & Financial Reporting—Transportation of Hazardous Materials*.

requirement that tracks any benefits of PTC, including efficiencies on the lines that have PTC installed. PPG also asks the Board to gather data on any efficiency gains caused by PTC on lines that do not have PTC installed. In reply, UP states that it would not oppose a separate proceeding to address the benefits from PTC, but UP opposes broadening this proceeding to require the reporting of benefits from PTC because it will add complications and delay. UP argues the railroads are incurring real measurable costs to install PTC now, while calculating benefits from PTC, which will occur in the future, would be speculative and complex.

PPG has not shown that its request is practical or warranted at this time. While carriers state that they are incurring costs now to meet the 2015 implementation deadline, any efficiencies that arise will occur after implementation. Moreover, identifying the costs associated with implementing PTC appears to be relatively straightforward, and UP has proposed a viable approach, described below, to supplement the R–1 reports and capture this data.[8] By contrast, it is not clear how, at this point, we would identify those productivity gains that may arise as a result of PTC investments, and PPG has not proposed a method of doing so.

Mechanics of the Change. Our proposed rule change would require a "PTC Supplement" to be filed along with the R–1 annual report (which would not change).[9] The supplement would provide for PTC versions of schedules 330 (road property and equipment improvements), 332 (depreciation base and rates—road property and equipment), 335 (accumulated depreciation), 352B (investment in railway property), and 410 (railway operating expenses) containing the dollar amounts that would reflect only the amounts attributable to PTC for the filing year. Also, the PTC Supplement would contain PTC versions of schedules 700 and 720, to report the aggregate mileage on which PTC is installed as of the date of filing, and schedule 710 to identify the number of locomotives equipped with PTC. Railroads would also report, by footnote in each supplement schedule, PTC-related expenditures for passenger-only service not otherwise captured in the individual schedules to allow the Board to understand fully the railroads' PTC expenditures.

In addition to separating capital expenses and operating expenses incurred by the railroad for PTC, the respondent entity should include by footnote disclosure the value of funds from government transfers, including grants, subsidies, and other contributions or reimbursements, used or designated to purchase or create PTC assets or to offset PTC costs.[10] These amounts represent non-railroad monies used or designated for PTC and would provide for full disclosure of PTC costs. This disclosure would identify the nature and location of the project by FRA identification, if applicable. This additional information will help the Board to monitor the financing of PTC installation.

UP also requests that the Board include schedule 755 (information on carloads, car-miles, and train-miles) in the PTC Supplement. However, we believe a supplement to schedule 755 is unnecessary to monitor the implementation of PTC, because gathering such data would not aid us in tracking expenditures made for PTC. Nevertheless, interested parties may comment on whether any final rule the Board promulgates should require the reporting of such information. Any such comments should address whether collecting such information would assist the Board in monitoring PTC implementation and, if so, how it would do so.

Regulatory Flexibility Act. The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, generally requires a description and analysis of new rules that would have a significant economic impact on a substantial number of small entities. In drafting a rule, an agency is required to: (1) Assess the effect that its regulation will have on small entities; (2) analyze effective alternatives that may minimize a regulation's impact; and (3) make the analysis available for public comment. §§ 601–604. In its notice of proposed rulemaking, the agency must either include an initial regulatory flexibility analysis, § 603(a), or certify that the proposed rule would not have a "significant impact on a substantial number of small entities," § 605(b). The impact must be a direct impact on small entities "whose conduct is circumscribed or mandated" by the proposed rule. *White Eagle Coop. Ass'n* v. *Conner,* 553 F.3d 467, 480 (7th Cir. 2009).

The proposed rule, if adopted, will not have a significant impact on a substantial number of small entities. The proposed rule would affect only entities that are required to file R–1 reports; these reports are only required to be submitted by Class I carriers. 49 CFR 1241.1. Class I carriers are all large railroads;[11] accordingly, there will be no impact on small railroads (small entities).

Paperwork Reduction Act. Pursuant to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501–3549, and Office of Management and Budget (OMB) regulations at 5 CFR 1320.8(d)(3), the Board seeks comments regarding: (1) Whether this collection of information, as modified in the proposed rule and further described in Appendix A, is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility; (2) the accuracy of the Board's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) 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, when appropriate. Information pertinent to these issues is included in Appendix C. This proposed rule will be submitted to OMB for review as required under 44 U.S.C. 3507(d) and 5 CFR 1320.11.

A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration, Washington, DC 20416.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1241

Railroads, Reporting and recordkeeping requirements.

Decided: October 3, 2011.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey. Commissioner Mulvey dissented with a separate expression.

Jeffrey Herzig,

Clearance Clerk.

Commissioner Mulvey, dissenting:

In EP 681, *Class I Railroad Accounting & Financial Reporting—Transportation of Hazardous Materials,* the Board is considering whether and how it should update its railroad reporting requirements and the Uniform Railroad Costing System to better capture the operating costs of transporting hazardous materials. By inclusion of the word "whether," the Board made clear in Ex Parte 681 that it has not decided that it should allow

[8] The carriers' R–1 forms are independently audited; the Board monitors these audits and can take action if a carrier is misreporting expenses as PTC related.

[9] Appendix B features samples of the proposed PTC versions of the schedules.

[10] *See infra* App. B, Table Footnote: PTC Grants.

[11] *See supra* note 2.

hazardous materials transportation costs to be used in a prescribed way in Board proceedings.

The questions under consideration in EP 681 are important ones. The resolution has the potential to impact the rates paid by shippers of hazardous materials and, therefore, must be examined carefully. To gain the broadest possible comments from stakeholders, the Board began its consideration with an Advance Notice of Proposed Rulemaking. Even though the record in that ANPR has been complete since February 2009, the Board has yet to propose a rule regarding the treatment of hazardous materials transportation costs in Board proceedings.

In light of this history, today's decision to propose rules that would require PTC-related costs to be separately reported from other capital expenditures is premature. The Board should first decide how such costs may be used in Board proceedings. Indeed, should the Board ultimately determine that hazardous materials transportation costs can be attributed to particular movements, any determination regarding how the information can be used could very well inform how it should be reported.

Moreover, we must decide the issues raised in EP 681 soon. The costs associated with PTC are no doubt growing as the railroad industry moves closer to the current statutory deadline for compliance. Should the Board implement a comprehensive approach to the costing issues associated with hazardous materials, we may be able to minimize the complexity and expenditures associated with litigating this issue in individual Board proceedings. I fear that the "cart before the horse" approach that the Board is initiating today could do the opposite.

For the reasons set forth in the preamble, the Surface Transportation Board proposes to amend part 1241 of title 49, chapter X, subchapter C, of the Code of Federal Regulations as follows:

PART 1241—ANNUAL, SPECIAL, OR PERIODIC REPORTS—CARRIERS SUBJECT TO PART I OF THE INTERSTATE COMMERCE ACT

1. The authority citation for part 1241 continues to read as follows:

Authority: 49 U.S.C. 11145.

2. Amend § 1241, by adding paragraph (b) to read as follows:

§ 1241.11 Annual reports of class I railroads.

* * * * *

(b) Expenditures and certain statistical information, as described below, for Positive Train Control (PTC) installation, maintenance, and operation shall be separately identified in a supplement to the Railroad Annual Report Form R–1 and submitted with the Railroad Annual Report Form R–1. This supplement shall identify PTC-related expenditures on road property and equipment improvements, depreciation of road property and equipment, accumulated depreciation, investment in railway property, and railway operating expenses. The supplement shall also identify the total mileage on which carriers install PTC and the number of locomotives equipped with PTC. The supplement will include PTC-related expenditures for passenger-only service not otherwise captured in the individual schedules. In addition to separating capital expenses and operating expenses incurred by the railroad for PTC, the respondent entity should include the value of funds received from government transfers to include grants, subsidies, and other contributions or reimbursements that the respondent entity used to purchase or create PTC assets or to offset PTC costs.

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

Appendix A

Proposed PTC Versions of Schedules: 330, 332, 335, 352B, 410, 700, 710, and 720

BILLING CODE 4915–01–P

PTC Supplement

Road Initials: Year

330. ROAD PROPERTY AND EQUIPMENT AND IMPROVEMENTS TO LEASED PROPERTY AND EQUIPMENT
(Dollars in Thousands)

Line No.	Cross No	Account (a)	Balance at Beginning of year (b)	Expenditures during the year for original road & equipment & road extensions (c)	Expenditures during the year for purchase of existing lines, reorganizations, etc. (d)	Line No.
1		(2) Land for transportation purposes				1
2		(3) Grading				2
3		(4) Other right-of-way expenditures				3
4		(5) Tunnels and subways				4
5		(6) Bridges, trestles and culverts				5
6		(7) Elevated structures				6
7		(8) Ties				7
8		(9) Rail and other track material				8
9		(11) Ballast				9
10		(13) Fences, snowsheds and signs				10
11		(16) Station and office buildings				11
12		(17) Roadway buildings				12
13		(18) Water stations				13
14		(19) Fuel stations				14
15		(20) Shops and enginehouses				15
16		(22) Storage warehouses				16
17		(23) Wharves and docks				17
18		(24) Coal and ore wharves				18
19		(25) TOFC/COFC terminals				19
20		(26) Communications systems				20
21		(27) Signals and interlockers				21
22		(29) Power plants				22
23		(31) Power transmission systems				23
24		(35) Miscellaneous structures				24
25		(37) Roadway machines				25
26		(39) Public improvements - construction				26
27		(44) Shop machinery				27
28		(45) Power plant machinery				28
29		Other lease/rentals				29
30		TOTAL EXPENDITURES FOR ROAD				30
31		(52) Locomotives				31
32		(53) Freight train cars				32
33		(54) Passenger train cars				33
34		(55) Highway revenue equipment				34
35		(56) Floating equipment				35
36		(57) Work equipment				36
37		(58) Miscellaneous equipment				37
38		(59) Computer systems & word processing equipment				38
39		TOTAL EXPENDITURES FOR EQUIPMENT				39
40		(76) Interest during construction				40
41		(80) Other elements of investment				41
42		(90) Construction work in progress				42
43		GRAND TOTAL				43

PTC Supplement

Road Initials: Year

330. ROAD PROPERTY AND EQUIPMENT AND IMPROVEMENTS TO LEASED PROPERTY AND EQUIPMENT - (Continued)
(Dollars in Thousands)

Line No	Cross No	Expenditures for additions during the year (e)	Credits for property retired during the year (f)	Net changes during the year (g)	Balance at close of year (h)	Line No.
1						1
2						2
3						3
4						4
5						5
6						6
7						7
8						8
9						9
10						10
11						11
12						12
13						13
14						14
15						15
16						16
17						17
18						18
19						19
20						20
21						21
22						22
23						23
24						24
25						25
26						26
27						27
28						28
29						29
30						30
31						31
32						32
33						33
34						34
35						35
36						36
37						37
38						38
39						39
40						40
41						41
42						42
43						43

* PTC-related expenditures from passenger-only service not otherwise captured in this schedule shall be stated in the aggregate here.

PTC Supplement

Road Initials: Year

332. DEPRECIATION BASE AND RATES - ROAD AND EQUIPMENT OWNED AND LEASED FROM OTHERS
(Dollars in Thousands)

Line No.	Account (a)	OWNED AND USED Depreciation Base 1/1 At beginning of year (b)	OWNED AND USED Depreciation Base 12/1 At close of year (c)	OWNED AND USED Annual composite rate % (d)	LEASED FROM OTHERS Depreciation Base At beginning of year (e)	LEASED FROM OTHERS Depreciation Base At close of year (f)	LEASED FROM OTHERS Annual composite rate % (g)	Line No.
	ROAD							
1	(3) Grading							1
2	(4) Other right-of-way expenditures							2
3	(5) Tunnels and subways							3
4	(6) Bridges, trestles and culverts							4
5	(7) Elevated structures							5
6	(8) Ties							6
7	(9) Rail and other track material							7
8	(11) Ballast							8
9	(13) Fences, snowsheds and signs							9
10	(16) Station and office buildings							10
11	(17) Roadway buildings							11
12	(18) Water stations							12
13	(19) Fuel stations							13
14	(20) Shops and enginehouses							14
15	(22) Storage warehouses							15
16	(23) Wharves and docks							16
17	(24) Coal and ore wharves							17
18	(25) TOFC/COFC terminals							18
19	(26) Communications systems							19
20	(27) Signals and interlockers							20
21	(29) Power plants							21
22	(31) Power transmission systems							22
23	(35) Miscellaneous structures							23
24	(37) Roadway machines							24
25	(39) Public improvements - construction							25
26	(44) Shop machinery							26
27	(45) Power plant machinery							27
28	All other road accounts							28
29	Amortization (other than def. projects)							29
30	TOTAL ROAD							30
	EQUIPMENT							
31	(52) Locomotives							31
32	(53) Freight train cars							32
33	(54) Passenger train cars							33
34	(55) Highway revenue equipment							34
35	(56) Floating equipment							35
36	(57) Work equipment							36
37	(58) Miscellaneous equipment							37
38	(59) Computer systems & WP equipment							38
39	TOTAL EQUIPMENT							39
40	GRAND TOTAL			NA			NA	40

* PTC-related expenditures from passenger-only service not otherwise captured in this schedule shall be stated in the aggregate here:

PTC Supplement

Road Initials: Year

335. ACCUMULATED DEPRECIATION - ROAD AND EQUIPMENT OWNED AND USED
(Dollars in Thousands)

Line No.	Cross Check	Account (a)	Balance at beginning of year (b)	CREDITS TO RESERVE During the year: Charges to operating expenses (c)	CREDITS TO RESERVE During the year: Other credits (d)	DEBITS TO RESERVE During the year: Retirements (e)	DEBITS TO RESERVE During the year: Other debits (f)	Balance at close of year (g)	Line No.
		ROAD							
1		(3) Grading							1
2		(4) Other right-of-way expenditures							2
3		(5) Tunnels and subways							3
4		(6) Bridges, trestles and culverts							4
5		(7) Elevated structures							5
6		(8) Ties							6
7		(9) Rail and other track material							7
8		(11) Ballast							8
9		(13) Fences, snowsheds and signs							9
10		(16) Station and office buildings							10
11		(17) Roadway buildings							11
12		(18) Water stations							12
13		(19) Fuel stations							13
14		(20) Shops and enginehouses							14
15		(22) Storage warehouses							15
16		(23) Wharves and docks							16
17		(24) Coal and ore wharves							17
18		(25) TOFC/COFC terminals							18
19		(26) Communications systems							19
20		(27) Signals and interlockers							20
21		(29) Power plants							21
22		(31) Power transmission systems							22
23		(35) Miscellaneous structures							23
24		(37) Roadway machines							24
25		(39) Public improvements - const.							25
26		(44) Shop machinery							26
27		(45) Power plant machinery							27
28		All other road accounts							28
29		Amortization (adjustments)							29
30		TOTAL ROAD							30
		EQUIPMENT							
31		(52) Locomotives							31
32		(53) Freight train cars							32
33		(54) Passenger train cars							33
34		(55) Highway revenue equipment							34
35		(56) Floating equipment							35
36		(57) Work equipment							36
37		(58) Miscellaneous equipment							37
38		(59) Computer systems & WP equip							38
39		Amortization (adjustments)							39
40		TOTAL EQUIPMENT							40
41		GRAND TOTAL							41

* PTC-related expenditures from passenger-only service not otherwise captured in this schedule shall be stated in the aggregate here:

PTC Supplement

Road Initials: Year

335. ACCUMULATED DEPRECIATION - ROAD AND EQUIPMENT OWNED AND USED
(Dollars in Thousands)

Line No.	Cross Check	Account (a)	Balance at beginning of year (b)	CREDITS TO RESERVE During the year: Charges to operating expenses (c)	CREDITS TO RESERVE During the year: Other credits (d)	DEBITS TO RESERVE During the year: Retirements (e)	DEBITS TO RESERVE During the year: Other debits (f)	Balance at close of year (g)	Line No.
1		ROAD (3) Grading							1
2		(4) Other right-of-way expenditures							2
3		(5) Tunnels and subways							3
4		(6) Bridges, trestles and culverts							4
5		(7) Elevated structures							5
6		(8) Ties							6
7		(9) Rail and other track material							7
8		(11) Ballast							8
9		(13) Fences, snowsheds and signs							9
10		(16) Station and office buildings							10
11		(17) Roadway buildings							11
12		(18) Water stations							12
13		(19) Fuel stations							13
14		(20) Shops and enginehouses							14
15		(22) Storage warehouses							15
16		(23) Wharves and docks							16
17		(24) Coal and ore wharves							17
18		(25) TOFC/COFC terminals							18
19		(26) Communications systems							19
20		(27) Signals and interlockers							20
21		(29) Power plants							21
22		(31) Power transmission systems							22
23		(35) Miscellaneous structures							23
24		(37) Roadway machines							24
25		(39) Public improvements - const.							25
26		(44) Shop machinery							26
27		(45) Power plant machinery							27
28		All other road accounts							28
29		Amortization (adjustments)							29
30		TOTAL ROAD							30
31		EQUIPMENT (52) Locomotives							31
32		(53) Freight train cars							32
33		(54) Passenger train cars							33
34		(55) Highway revenue equipment							34
35		(56) Floating equipment							35
36		(57) Work equipment							36
37		(58) Miscellaneous equipment							37
38		(59) Computer systems & WP equip.							38
39		Amortization (adjustments)							39
40		TOTAL EQUIPMENT							40
41		GRAND TOTAL							41

* PTC-related expenditures from passenger-only service not otherwise captured in this schedule shall be stated in the aggregate here

PTC Supplement

410. RAILWAY OPERATING EXPENSES
(Dollars in Thousands)

State the railway operating expenses on respondent's road for the year classifying them in accordance with the Uniform System of Accounts for Railroad Companies, and allocate the common operating expenses in accordance with the Board's rules governing the separation of such expenses between freight and passenger services.

Road Initials Year

Line No.	Cross Check	Name of railway operating expense account (a)	Salaries & Wages (b)	Material, tools, supplies, fuels, & lubricants (c)	Purchased services (d)	General (e)	Total freight expense (f)	Passenger (g)	Total (h)	Line No.
		WAYS & STRUCTURES								
		ADMINISTRATION								
1		Track								1
2		Bridge & building								2
3		Signal								3
4		Communication								4
5		Other								5
		REPAIRS AND MAINTENANCE								
6		Roadway - running								6
7		Roadway - switching								7
8		Tunnels & subways - running								8
9		Tunnels & subways - switching								9
10		Bridges & culverts - running								10
11		Bridges & culverts - switching								11
12		Ties - running								12
13		Ties - switching								13
14		Rail & other track material - running								14
15		Rail & other track material - switching								15
16		Ballast - running								16
17		Ballast - switching								17
18		Road property damaged - running								18
19		Road property damaged - switching								19
20		Road property damaged - other								20
21		Signals & interlockers - running								21
22		Signals & interlockers - switching								22
23		Communications systems								23
24		Power systems								24
25		Highway grade crossings - running								25
26		Highway grade crossings - switching								26
27		Station & office buildings								27
28		Shop buildings - locomotives								28
29		Shop buildings - freight cars						N/A		29
30		Shop buildings - other equipment								30

PTC Supplement

410. RAILWAY OPERATING EXPENSES - (Continued)
(Dollars in Thousands)

Road Initials Year

Line No.	Cross Check	Name of railway operating expense account (a)	Salaries & Wages (b)	Material, tools, supplies, fuels, & lubricants (c)	Purchased services (d)	General (e)	Total freight expense (f)	Passenger (g)	Total (h)	Line No.
		REPAIRS AND MAINTENANCE - (Continued)								
101		Locomotive servicing facilities								101
102		Miscellaneous buildings & structures								102
103		Coal terminals						N/A		103
104		Ore terminals						N/A		104
105		Other marine terminals						N/A		105
106		TOFC/COFC terminals						N/A		106
107		Motor vehicle loading & distribution facilities						N/A		107
108		Facilities for other specialized service operations						N/A		108
109		Roadway machines								109
110		Small tools & supplies								110
111		Snow removal								111
112		Fringe benefits - running	N/A	N/A	N/A					112
113		Fringe benefits - switching	N/A	N/A	N/A					113
114		Fringe benefits - other	N/A	N/A	N/A					114
115		Casualties & insurance - running	N/A	N/A	N/A					115
116		Casualties & insurance - switching	N/A	N/A	N/A					116
117		Casualties & insurance - other	N/A	N/A	N/A					117
118	*	Lease rentals - debit -running -	N/A	N/A		N/A				118
119	*	Lease rentals - debit - switching	N/A	N/A		N/A				119
120	*	Lease rentals - debit -other	N/A	N/A		N/A				120
121	*	Lease rentals - (credit) - running	N/A	N/A	( )	N/A	( )	( )	( )	121
122	*	Lease rentals - (credit) - switching	N/A	N/A	( )	N/A	( )	( )	( )	122
123	*	Lease rentals - (credit) - other	N/A	N/A	( )	N/A	( )	( )	( )	123
124		Joint facility rent - debit - running	N/A	N/A		N/A				124
125		Joint facility rent - debit - switching	N/A	N/A		N/A				125
126		Joint facility rent - debit - other	N/A	N/A		N/A				126
127		Joint facility rent - (credit) - running	N/A	N/A	( )	N/A	( )	( )	( )	127
128		Joint facility rent - (credit) - switching	N/A	N/A	( )	N/A	( )	( )	( )	128
129		Joint facility rent - (credit) - other	N/A	N/A	( )	N/A	( )	( )	( )	129
130	*	Other rents - debit - running	N/A	N/A		N/A				130
131	*	Other rents - debit - switching	N/A	N/A		N/A				131
132	*	Other rents - debit - other	N/A	N/A		N/A				132
133	*	Other rents - (credit) - running	N/A	N/A	( )	N/A	( )	( )	( )	133

PTC Supplement

410. RAILWAY OPERATING EXPENSES - (Continued)
(Dollars in Thousands)

Road Initials — Year

Line No	Cross Check	Name of railway operating expense account (a)	Salaries & Wages (b)	Material, tools, supplies, fuels & lubricants (c)	Purchased services (d)	General (e)	Total freight expense (f)	Passenger (g)	Total (h)	Line No
		REPAIRS AND MAINTENANCE - (Continued)								
134	*	Other rents - (credit) - switching	N/A	N/A	( )	N/A	( )	( )	( )	134
135	*	Other rents - (credit) - other	N/A	N/A	( )	N/A	( )	( )	( )	135
136	*	Depreciation - running	N/A	N/A	N/A					136
137	*	Depreciation - switching	N/A	N/A	N/A					137
138	*	Depreciation - other	N/A	N/A	N/A					138
139		Joint facility - debit - running	N/A	N/A		N/A				139
140		Joint facility - debit - switching	N/A	N/A		N/A				140
141		Joint facility - debit - other	N/A	N/A		N/A				141
142		Joint facility - (credit) - running	N/A	N/A	( )	N/A	( )	( )	( )	142
143		Joint facility - (credit) - switching	N/A	N/A	( )	N/A	( )	( )	( )	143
144		Joint facility - (credit) - other	N/A	N/A	( )	N/A	( )	( )	( )	144
145		Dismantling retired road property - running								145
146		Dismantling retired road property - switching								146
147		Dismantling retired road property - other								147
148		Other - running								148
149		Other - switching								149
150		Other - other								150
151		TOTAL WAY AND STRUCTURES								151
		EQUIPMENT								
		LOCOMOTIVES								
201		Administration								201
202	*	Repair & maintenance								202
203	*	Machinery repair								203
204		Equipment damaged								204
205		Fringe benefits	N/A	N/A	N/A					205
206		Other casualties & insurance	N/A	N/A	N/A					206
207	*	Lease rentals - debit	N/A	N/A		N/A				207
208	*	Lease rentals - (credit)	N/A	N/A	( )	N/A	( )	( )	( )	208
209		Joint facility rent - debit	N/A	N/A		N/A				209
210		Joint facility rent - (credit)	N/A	N/A	( )	N/A	( )	( )	( )	210
211	*	Other rents - debit	N/A	N/A		N/A				211
212	*	Other rents - (credit)	N/A	N/A	( )	N/A	( )	( )	( )	212
213	*	Depreciation	N/A	N/A	N/A					213
214		Joint facility - debit	N/A	N/A		N/A				214
215		Joint facility - (credit)	N/A	N/A	( )	N/A	( )	( )	( )	215
216	*	Repairs billed to others - (credit)	N/A	N/A	( )	N/A	( )	( )	( )	216

PTC Supplement

410. RAILWAY OPERATING EXPENSES - (Continued)
(Dollars in Thousands)

Road Initials — Year

Line No	Cross Check	Name of railway operating expense account (a)	Salaries & Wages (b)	Material, tools, supplies, fuels & lubricants (c)	Purchased services (d)	General (e)	Total freight expense (f)	Passenger (g)	Total (h)	Line No
		LOCOMOTIVES - (Continued)								
217		Dismantling retired property								217
218		Other								218
219		TOTAL LOCOMOTIVES								219
		FREIGHT CARS								
220		Administration						N/A		220
221	*	Repair & maintenance						N/A		221
222	*	Machinery repair						N/A		222
223		Equipment damaged						N/A		223
224		Fringe benefits	N/A	N/A	N/A			N/A		224
225		Other casualties & insurance	N/A	N/A	N/A			N/A		225
226	*	Lease rentals - debit	N/A	N/A		N/A		N/A		226
227	*	Lease rentals - (credit)	N/A	N/A		N/A		N/A		227
228		Joint facility rent - debit	N/A	N/A		N/A		N/A		228
229		Joint facility rent - (credit)	N/A	N/A		N/A		N/A		229
230	*	Other rents - debit	N/A	N/A		N/A		N/A		230
231	*	Other rents - (credit)	N/A	N/A		N/A		N/A		231
232	*	Depreciation	N/A	N/A	N/A			N/A		232
233		Joint facility - debit	N/A	N/A		N/A		N/A		233
234		Joint facility - (credit)	N/A	N/A		N/A		N/A		234
235	*	Repairs billed to others - (credit)	N/A	N/A		N/A		N/A		235
236		Dismantling retired property						N/A		236
237		Other						N/A		237
238		TOTAL FREIGHT CARS						N/A		238
		OTHER EQUIPMENT								
301		Administration								301
		Repair & maintenance								
302	*	Trucks, trailers, & containers - revenue service						N/A		302
303	*	Floating equipment - revenue service						N/A		303
304	*	Passenger & other revenue equipment								304
305	*	Computers and data processing equipment								305
306	*	Machinery								306
307	*	Work & other non-revenue equipment								307
308		Equipment damaged								308
309		Fringe benefits	N/A	N/A	N/A					309
310		Other casualties & insurance	N/A	N/A	N/A					310
311	*	Lease rentals - debit	N/A	N/A		N/A				311
312	*	Lease rentals - (credit)	N/A	N/A		N/A				312

PTC Supplement

410. RAILWAY OPERATING EXPENSES - (Continued)
(Dollars in Thousands)

Line No.	Cross Check	Name of railway operating expense account (a)	Salaries & Wages (b)	Material, tools, supplies, fuels, & lubricants (c)	Purchased services (d)	General (e)	Total freight expense (f)	Passenger (g)	Total (h)	Line No.
		OTHER EQUIPMENT (Continued)								
313		Joint facility rent - debit	N/A	N/A		N/A				313
314		Joint facility rent - (credit)	N/A	N/A		N/A				314
315		Other rents - debit	N/A	N/A		N/A				315
316		Other rents - (credit)	N/A	N/A		N/A				316
317		Depreciation	N/A	N/A	N/A					317
318		Joint facility - debit	N/A	N/A		N/A				318
319		Joint facility - (credit)	N/A	N/A		N/A				319
320		Repairs billed to others - (credit)	N/A	N/A		N/A				320
321		Dismantling retired property								321
322		Other								322
323		TOTAL OTHER EQUIPMENT								323
324		TOTAL EQUIPMENT								324
		TRANSPORTATION								
		TRAIN OPERATIONS								
401		Administration								401
402		Engine crews								402
403		Train crews								403
404		Dispatching trains								404
405		Operating signals & interlockers								405
406		Operating drawbridges								406
407		Highway crossing protection								407
408		Train inspection & lubrication								408
409		Locomotive fuel								409
410		Electric power electric power produced or purchased for motive power								410
411		Servicing locomotives								411
412		Freight lost or damaged - solely related	N/A	N/A	N/A					412
413		Clearing wrecks								413
414		Fringe benefits	N/A	N/A	N/A					414
415		Other casualties & insurance	N/A	N/A	N/A					415
416		Joint facility - debit	N/A	N/A		N/A				416
417		Joint facility - (credit)	N/A	N/A		N/A				417
418		Other								418
419		TOTAL TRAIN OPERATIONS								419
		YARD OPERATIONS								
420		Administration								420
421		Switch crews								421

Year / Report in Dollars

PTC Supplement

410. RAILWAY OPERATING EXPENSES - (Continued)
(Dollars in Thousands)

Line No.	Cross Check	Name of railway operating expense account (a)	Salaries & Wages (b)	Material, tools, supplies, fuels, & lubricants (c)	Purchased services (d)	General (e)	Total freight expense (f)	Passenger (g)	Total (h)	Line No.
		YARD OPERATIONS (Continued)								
422		Controlling operations								422
423		Yard and terminal clerical								423
424		Operating switches, signals, retarders, & humps								424
425		Locomotive fuel								425
426		Electric power electric power produced or purchased for motive power								426
427		Servicing locomotives								427
428		Freight lost or damaged - solely related	N/A	N/A	N/A					428
429		Clearing wrecks								429
430		Fringe benefits	N/A	N/A	N/A					430
431		Other casualties & insurance	N/A	N/A	N/A					431
432		Joint facility - debit	N/A	N/A		N/A				432
433		Joint facility - (credit)	N/A	N/A		N/A				433
434		Other								434
435		TOTAL YARD OPERATIONS								435
		TRAIN & YARD OPERATIONS COMMON								
501		Cleaning car interiors				N/A				501
502		Adjusting & transferring loads				N/A		N/A		502
503		Car loading devices & grain docks				N/A		N/A		503
504		Freight lost or damaged - all other	N/A	N/A	N/A					504
505		Fringe benefits	N/A	N/A	N/A					505
506		TOTAL TRAIN & YARD OPERATIONS COMMON								506
		SPECIALIZED SERVICE OPERATIONS								
507	*	Administration						N/A		507
508	*	Pickup & delivery and marine line haul						N/A		508
509	*	Loading & unloading and local marine						N/A		509
510	*	Protective services						N/A		510
511	*	Freight lost or damaged - solely related	N/A	N/A	N/A			N/A		511
512	*	Fringe benefits	N/A	N/A	N/A			N/A		512
513	*	Casualties & insurance	N/A	N/A	N/A			N/A		513
514	*	Joint facility - debit	N/A	N/A		N/A		N/A		514
515	*	Joint facility - (credit)	N/A	N/A		N/A		N/A		515
516	*	Other						N/A		516
517	*	TOTAL SPECIALIZED SERVICE OPERATIONS						N/A		517

Year / Report in Dollars

PTC Supplement

410. RAILWAY OPERATING EXPENSES - (Continued)
(Dollars in Thousands)

Record Entries Year

Line No	Cross Check	Name of railway operating expense account (a)	Salaries & Wages (b)	Material, tools supplies, fuels & lubricants (c)	Purchased services (d)	General (e)	Total freight expense (f)	Passenger (g)	Total (h)	Line No.
518		ADMINISTRATIVE SUPPORT OPERATIONS Administration								518
519		Employees performing clerical & accounting functions								519
520		Communication systems operations								520
521		Loss & damage claims processing								521
522		Fringe benefits	N/A	N/A	N/A					522
523		Casualties & insurance	N/A	N/A	N/A					523
524		Joint facility - debit	N/A	N/A		N/A				524
525		Joint facility - (credit)	N/A	N/A		N/A				525
526		Other								526
527		TOTAL ADMINISTRATIVE SUPPORT OPERATIONS								527
528		TOTAL TRANSPORTATION								528
601		GENERAL AND ADMINISTRATIVE Officers - general administration								601
602		Accounting, auditing, & finance								602
603		Management services & data processing								603
604		Marketing								604
605		Sales								605
606		Industrial development						N/A		606
607		Personnel & labor relations								607
608		Legal & secretarial								608
609		Public relations & advertising								609
610		Research & development								610
611		Fringe benefits	N/A	N/A	N/A					611
612		Casualties & insurance	N/A	N/A	N/A					612
613		Writedown of uncollectible accounts	N/A	N/A	N/A					613
614		Property taxes	N/A	N/A	N/A					614
615		Other taxes except on corporate income or pay	N/A	N/A	N/A					615
616		Joint facility - debit	N/A	N/A		N/A				616
617		Joint facility - (credit)	N/A	N/A		N/A				617
618		Other								618
619		TOTAL GENERAL AND ADMINISTRATIVE								619
620	*	TOTAL CARRIER OPERATING EXPENSE								620

* PTC-related expenditures from passenger-only service not otherwise captured in this schedule shall be stated in the aggregate here:

PTC Supplement

Road Initials Year

700. MILEAGE OPERATED AT CLOSE OF YEAR

Line No.		Class (a)	Proportion owned or leased by respondent (b)	Running tracks, passing tracks, cross-overs, etc. Miles of road (c)	Miles of second main track (d)	Miles of all other main tracks (e)	Miles of passing tracks, cross-overs, and turnouts (f)	Miles of way switching tracks (g)	Miles of yard switching tracks (h)	TOTAL (i)	Line No.
1											1
2											2
3											3
4											4
5											5
6											6
7											7
8											8
9											9
10											10
11											11
12											12
13											13
14											14
15											15
16											16
17											17
18											18
19											19
20											20
21											21
22											22
23											23
24											24
25											25
26											26
27											27
28											28
29											29
30											30
31											31
32											32
33											33
34											34
35											35
36											36
37											37
38											38
39											39
40											40
41											41
42											42
43											43
44											44
45											45
46											46
47											47
48											48
49											49
50											50
51											51
52											52
53											53
54											54
55											55
56											56
57		TOTAL									57
58		Miles of electrified road or track included in the preceding grand total									58

PTC Supplement

Road Initials Year

NOTES AND REMARKS

* PTC-related expenditures from passenger-only service not otherwise captured in this schedule shall be stated in the aggregate here:

PTC Supplement

710. INVENTORY OF EQUIPMENT
UNITS OWNED, INCLUDED IN INVESTMENT ACCOUNT, AND LEASED FROM OTHERS

Line No.	Cross Check	Type or design of units (a)	Units in service of respondent at beginning of year (b)	Changes During the Year: Units Installed: New units purchased or built (c)	Changes During the Year: Units Installed: New units leased from others (d)	Changes During the Year: Units Installed: Rebuilt units acquired and rebuilt units rewritten into property accounts (e)	Changes During the Year: Units Installed: All other units including reclassification and second hand units purchased or leased from others (f)	Units retired from service of respondent whether owned or leased, including reclassification (g)	Units at Close of Year: Owned and used (h)	Units at Close of Year: Leased from others (i)	Units at Close of Year: Total in service of respondent (col (h) & (i)) (j)	Units at Close of Year: Aggregate capacity of units reported in col (j) (k)	Units at Close of Year: Leased to others (l)	Line No
		Locomotive Units										(HP)		
1		Diesel-freight units												1
2		Diesel-passenger units												2
3		Diesel-multiple purpose units												3
4		Diesel-switching units												4
5	*	TOTAL (lines 1 to 4) units												5
6	*	Electric locomotives												6
7	*	Other self-powered units												7
8	*	TOTAL (lines 5, 6, and 7)												8
9	*	Auxiliary units										N/A		9
10	*	TOTAL LOCOMOTIVE UNITS (lines 8 and 9)										N/A		10

DISTRIBUTION OF LOCOMOTIVE UNITS IN SERVICE OF RESPONDENT AT CLOSE OF YEAR BUILT, DISREGARDING YEAR OF REBUILDING

Line No	Cross Check	Type or design of units (a)	Before 1/1/1980 (b)	Between 1/1/1980 and 12/31/1984 (c)	Between 1/1/1985 and 12/31/1989 (d)	Between 1/1/2000 and 12/31/2004 (e)	Between 1/1/2005 and 12/31/2008 (f)	During Calendar Year: 2010 (g)	2011 (h)	2012 (i)	2013 (j)	2014 (k)	TOTAL (l)	Line No
11	*	Diesel												11
12	*	Electric												12
13	*	Other self-powered units												13
14	*	TOTAL (lines 11 to 13)												14
15	*	Auxiliary units												15
16	*	TOTAL LOCOMOTIVE UNITS (lines 14 and 15)										N/A		16

Road Initials — Year

PTC Supplement

710. INVENTORY OF EQUIPMENT (Continued)
UNITS OWNED, INCLUDED IN INVESTMENT ACCOUNT, AND LEASED FROM OTHERS

Line No.	Cross Check	Type or design of units (a)	Units in service of respondent at beginning of year (b)	Changes During the Year: Units Installed: New units purchased or built (c)	Changes During the Year: Units Installed: New units leased from others (d)	Changes During the Year: Units Installed: Rebuilt units acquired and rebuilt units rewritten into property accounts (e)	Changes During the Year: Units Installed: All other units including reclassification and second hand units purchased or leased from others (f)	Units retired from service of respondent whether owned or leased, including reclassification (g)	Units at Close of Year: Owned and used (h)	Units at Close of Year: Leased from others (i)	Units at Close of Year: Total in service of respondent (col (h) & (i)) (j)	Units at Close of Year: Aggregate capacity of units reported in col (j) (k)	Units at Close of Year: Leased to others (l)	Line No.
		Passenger-Train Cars												
		Non-Self-Propelled												
17		Coaches (PA, PB, PBO)												17
18		Combined cars (All class C except CSB)												18
19		Parlor cars (PBC, PC, PL, PO)												19
20		Sleeping cars (PS, PT, PAS, PDS)												20
21		Dining, grill, & lounge cars (All class D, PD)										N/A		21
22		Nonpassenger carrying cars (All class B, CSB, M, PSA, IA)										N/A		22
23		TOTAL (Lines 17 to 22)												23
		Self-Propelled												
24		Electric passenger cars (EP, ET)												24
25		Electric combined cars (EC)												25
26		Internal combustion rail motorcars (ED, EG)												26
27		Other self-propelled cars (Specify types)												27
28		TOTAL (Lines 24 to 27)												28
29		TOTAL (Lines 23 and 28)												29
		Company Service Cars												
30		Business cars (PV)										N/A		30
31		Board outfit cars (MWX)										N/A		31
32		Derrick & snow removal cars (MWU, MWV, MWW, MWK)										N/A		32
33		Dump and ballast cars (MWB, MWD)										N/A		33
34		Other maintenance and service equipment cars										N/A		34
35		TOTAL (Lines 30 to 34)										N/A		35

Road Initials — Year

* PTC-related expenditures from passenger-only service not otherwise captured in the schedule shall be stated in the aggregate here

PTC Supplement

Road Initials _____ Year _____

716S. UNIT COST OF EQUIPMENT INSTALLED DURING THE YEAR

(Dollars in Thousands)

NEW UNITS

Line No.	Class of equipment	Number of Units	Total Weight (Tons)	Total Cost	Method of Acquisition	Line No.
1						1
2						2
3						3
4						4
5						5
6						6
7						7
8						8
9						9
10						10
11						11
12						12
13						13
14						14
15						15
16						16
17						17
18						18
19						19
20						20
21						21
22						22
23						23
24						24
25						25
	REBUILT UNITS					
26						26
27						27
28						28
29						29
30						30
31						31
32						32
33						33
34						34
35						35
36						36
37						37
38						38
39						39

* PTC-related expenditures from passenger-only service not otherwise captured in this schedule shall be stated in the aggregate here

PTC Supplement

720. TRACK AND TRAFFIC CONDITIONS

Line No.	Track category (a)	Mileage of tracks at end of period (whole numbers) (b)	Average annual traffic density in millions of gross ton-miles per track-mile* (use two decimal places) (c)	Average running speed limit (use two decimal places) (d)	Track miles under slow orders at end of period (e)	Line No.
1	A					1
2	B					2
3	C					3
4	D					4
5	E		XXXXXXXXXX	XXXXXXXX		5
6	TOTAL					6
7	F		XXXXXXXXXX	XXXXXXXX		7
8	Potential abandonments					8

* To determine average density, total track-miles (route-miles times number of tracks), rather than route-miles, shall be used

* PTC-related expenditures from passenger-only service not otherwise captured in this schedule shall be stated in the aggregate here.

Road _____ Year _____

Footnote: PTC Grants

In addition to separating capital expenses and operating expenses incurred by the railroad for PTC, the respondent entity should include by footnote disclosure here the value of funds received from government transfers to include grants, subsidies, and other contributions or reimbursements that the respondent entity used to purchase or create PTC assets or to offset PTC costs. These amounts represent non-railroad monies that the respondent entity used for PTC and would provide for full disclosure of PTC costs on an annual basis. This disclosure would identify the nature and location of the project by FRA identification, if applicable.						
Line No.	Entity Receiving Funds	Entity Dispensing Funds	Name of Program Providing Funding	Location(s) of the Project Funded	Amount of Funding Received	Line No.
1						1
2						2
3						3
4						4
5						5
6						6
7						7
8						8
9						9
10						10
11						11
12						12
13						13
14						14
15						15
16						16
17						17
18						18
19						19
20						20
21						21
22						22
23						23
24						24

BILLING CODE 4915–01–C

Appendix B

The additional information below is included to assist those who may wish to submit comments pertinent to review under the Paperwork Reduction Act:

Description of Collection

Title: Class I Railroad Annual Report.
OMB Control Number: 2140–0009.
STB Form Number: R–1.
Type of Review: Modification of approved collection.
Respondents: Class I railroads.
Number of Respondents: 7.
Estimated Time per Response: The proposed rule change that affects the R–1 report will not change the time per response, but it will require minimal time to adjust the process for reporting. Based on the limited amount of information involved, we estimate that the entire R–1 collection should not take more than 800 hours annually per Class I railroad. This estimate includes time spent reviewing instructions; searching existing data sources; gathering and maintaining the data needed; completing and reviewing the collection of information; and converting the data from the carrier's individual accounting system to the Board's Uniform System of Accounts (USOA), which ensures that the information will be presented in a consistent format across all reporting railroads, *see* 49 U.S.C. 11141–43, 11161–64, 49 CFR 1200–1201.
Frequency: Annually.
Total Burden Hours (annually including all respondents): Up to 5,600 hours annually for the entire R–1 report.
Total "Non-hour Burden" Cost: No "non-hour cost" burdens associated with this collection have been identified.
Needs and Uses: Annual R–1 reports are required to be filed by Class I railroads under 49 U.S.C. 11145. The reports show expenditures and operating statistics of the carriers. Expenditures include costs for right-of-way and structures, equipment, train and yard operations, and general and administrative expenses. Operating statistics include such items as car-miles, revenue-ton-miles, and gross ton-miles. The reports are used by the Board, other Federal agencies, and industry groups to monitor and assess railroad industry growth, financial stability, traffic, and operations, and to identify industry changes that may affect national transportation policy. The Board also uses this information to more effectively carry out other of its regulatory responsibilities, including: the regulation of maximum rail rates; acting on railroad requests for authority to engage in Board-regulated financial transactions such as mergers, acquisitions of control, and consolidations, *see* 49 U.S.C. 11323–11324; analyzing the information that the Board obtains through the annual railroad industry waybill sample, *see* 49 CFR part 1244; measuring off-branch costs in railroad abandonment proceedings, in accordance with 49 CFR 1152.32(n); developing the "rail cost adjustment factors," in accordance with 49 U.S.C. 10708; and conducting investigations and rulemakings.

The proposed identification of PTC information in the supplement to the R–1 reports will help the Board monitor the emergence of PTC in the rail industry. This notice does not propose that the Board use the identified PTC information for any additional purposes such as changing the Board's Uniform Rail Costing System or how costs are currently assigned in rate and other proceedings.

[FR Doc. 2011–26310 Filed 10–12–11; 8:45 am]
BILLING CODE 4915–01–P

Notices

Federal Register
Vol. 76, No. 198
Thursday, October 13, 2011

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2011–0039]

Notice of Decision To Authorize the Importation of Fresh Apricot, Sweet Cherry, and Plumcot Fruit From South Africa Into the Continental United States

Correction

In notice document 2011–25490 appearing on pages 61340–61341 in the issue of October 4, 2011, make the following correction:

On page 61341, in the first column, in the **DATES** section, "November 3, 2011" should read "October 4, 2011".

[FR Doc. C1–2011–25490 Filed 10–12–11; 8:45 am]
BILLING CODE 1505–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Meeting of the Colorado Recreation Resource Advisory Committee; Federal Lands Recreation Enhancement Act

AGENCY: Rocky Mountain Region, Forest Service, USDA.

ACTION: Meeting of the Colorado Recreation Resource Advisory Committee.

SUMMARY: The Colorado Recreation Resource Advisory Committee (RRAC) will meet by telephone conference call. The purpose of the meeting is to orient RRAC members and alternates to the laws, rules and regulations that pertain to the operation of the RRAC. No fee proposals will be discussed at this meeting.

DATES: The meeting will be held October 26, 2011, 10 a.m. to 3 p.m. MDT.

ADDRESS: The conference call access number and password to the meeting will be posted on the US Forest Service, Rocky Mountain Region, RRAC Web site at: *http://www.fs.usda.gov/goto/r2/recreation/rac.* Send written comments to Stephen Sherwood, Designated Federal Official for the Rocky Mountain Region and Colorado Recreation Resource Advisory Committee, 740 Simms Street Golden, CO 80401; *ssherwood@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Stephen Sherwood, Designated Federal Official for the Rocky Mountain Region and Colorado Recreation Resource Advisory Committee at the above address.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The meeting agenda will be posted on the RRAC Web site at *http://www.fs.usda.gov/goto/r2/recreation/rac.*

Committee discussion is limited to Forest Service staff, Committee members and alternates. However, persons who wish to bring recreation fee matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. A public input session will be provided and individuals who made written requests by October 24, 2011 will have the opportunity to address the Committee at the meeting if time allows.

The RRAC is authorized by the Federal Land Recreation Enhancement Act, which was signed into law by President Bush in December 2004.

Dated: October 5, 2011.

Maribeth Gustafson,

Acting Regional Forester, Rocky Mountain Region.

[FR Doc. 2011–26425 Filed 10–12–11; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Meeting of the Land Between The Lakes Advisory Board

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Land Between The Lakes Advisory Board will hold a meeting on November 3, 2011. Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App 2. The meeting agenda will focus on existing Environmental Education programs and improving engagement with regional school groups. The meeting is open to the public. Written comments are invited and should be sent to William P. Lisowsky, Area Supervisor, Land Between The Lakes, 100 Van Morgan Drive, Golden Pond, KY, 42211 and must be received by October 27, 2011 in order for copies to be provided to the members for this meeting. Board members will review written comments received, and at their request, oral clarification may be requested for a future meeting.

DATES: The meeting will be held Thursday, November 3, 2011 from 9 a.m. to approximately 4 p.m. C.S.T.

ADDRESSES: The meeting will be held at Land Between The Lakes at the Brandon Spring Group Center, 236 Brandon Spring Road, Dover, TN 37058.

FOR FURTHER INFORMATION CONTACT: Linda L. Taylor, Advisory Board Liaison, Land Between The Lakes, 100 Van Morgan Drive, Golden Pond, KY 42211, 270–924–2002. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. This service is available 7 days a week, 24 hours a day.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Board discussion is limited to Forest Service staff and Board members.

Dated: September 15, 2011.

William P. Lisowsky,

Area Supervisor, Land Between The Lakes.

[FR Doc. 2011–25757 Filed 10–12–11; 8:45 am]
BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Ashley Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ashley Resource Advisory Committee will conduct a meeting to review project status and ammendments to project work. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L 110–343) and in compliance with the Federal Advisory Committee

Act. The purpose of the meeting is review the status of approved projects and consider ammendments to the scope of work on projects funded for implementation, approve meeting minutes, set the next meeting date, time and location and receive public comment.

DATES: The meeting will be held November 10, 2011, from 6 p.m. to 8 p.m.

ADDRESSES: The business meeting will be held in the fire center conference room of the Ashley National Forest at 355 North Vernal Avenue, Vernal, Utah 84078. Written comments should be sent to Ashley National Forest, 355 North Vernal Avenue, Vernal, UT 84078. Comments may also be sent via e-mail to *ljhaynes@fs.fed.us*, or via facsimile to 435–781–5142.

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 Ashley National Forest, 355 North Vernal Avenue, Vernal, UT.

FOR FURTHER INFORMATION CONTACT: Louis Haynes, RAC Coordinator, Ashley National Forest, (435) 781–5105; e-mail: *ljhaynes@fs.fed.us*.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The business meeting is open to the public. The following business will be conducted: (1) Welcome and roll call; (2) Approval of meeting minutes; (3) Review of approved projects and modification to scope of work; (4) review of next meeting purpose, location, and date; (5) Receive 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. Public input sessions will be provided and individuals who made written requests by November 5, 2011 will have the opportunity to address the committee at these meetings.

Dated: October 4, 2011.

Nicholas T. Schmelter,

Acting Forest Supervisor.

[FR Doc. 2011–26423 Filed 10–12–11; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Louisiana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA) that a planning meeting of the Louisiana Advisory Committee to the Commission will convene by conference call at 2 p.m. and adjourn at approximately 5 p.m. on Monday, November 7, 2011. The purpose of this meeting is to continue planning the Committee's civil rights project.

This meeting is available to the public through the following toll-free call-in number: 1 (866) 393–8073, conference call access code number *3046445*. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and contact name Farella E. Robinson.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Corrine Sanders of the Central Regional Office and TTY/TDD telephone number, by 4 p.m. on November 1, 2011.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by November 18, 2011. The address is U.S. Commission on Civil Rights, 400 State Avenue, Suite 908, Kansas City, Kansas 66101. Comments may be e-mailed to *frobinson@usccr.gov*. Records generated by this meeting may be inspected and reproduced at the Central Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov*, or to contact the Central Regional Office at the above email or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, October 6, 2011.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2011–26401 Filed 10–12–11; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of meeting.

DATE AND TIME: Friday, October 21, 2011; 9:30 a.m. EDT

PLACE: 624 Ninth Street, NW., Room 540, Washington, DC 20425.

Meeting Agenda

This meeting is open to the public.

I. Approval of Agenda

II. Approval of the September 9, 2011 Meeting Minutes

III. Statement on the passing of Rev. Shuttlesworth and Professor Derrick Bell

IV. Program Planning Update and discussion of projects:

- Approval of School Discipline briefing report
- Approval of Scope of Discovery Plan for VRA Report

V. Management and Operations

- Staff Director's report
- Discussion of the use of Commission Letterhead
- Discussion of the use of USCCR email accounts
- Discussion of date change for December Commission Meeting

VI. State Advisory Committee Issues:

- Re-chartering the California SAC
- Re-chartering the Nebraska SAC
- Re-chartering the Arizona SAC

VII. Adjourn

CONTACT PERSON FOR FURTHER INFORMATION: Lenore Ostrowsky, Acting Chief, Public Affairs Unit (202) 376–8591.

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact Pamela Dunston at (202) 376–8105 or at *signlanguage@usccr.gov* at least seven business days before the scheduled date of the meeting.

Dated: October 11, 2011.

Kimberly A. Tolhurst,

Senior Attorney-Advisor.

[FR Doc. 2011–26583 Filed 10–11–11; 11:15 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 110921596–1557–01]

Voting Rights Act Amendments of 2006, Determinations Under Section 203

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of determination.

SUMMARY: As required by Section 203 of the Voting Rights Act of 1965, as amended, this notice publishes the Bureau of the Census (Census Bureau) Director's determinations as to which political subdivisions are subject to the minority language assistance provisions of the Act. As of this date, those jurisdictions that are listed as covered by Section 203 have a legal obligation to provide the minority language assistance prescribed by the Act.

DATES: *Effective Date:* This notice is effective on October 13, 2011.

FOR FURTHER INFORMATION CONTACT: For information regarding this notice, please contact Ms. Catherine M. McCully, Chief, Census Redistricting Data Office, Bureau of the Census, United States Department of Commerce, Room DIR 8H019, 4600 Silver Hill Rd, Washington DC 20233, by telephone at 301–763–4039, or visit the Redistricting Data Office Internet site at *http://www.census.gov/rdo/.*

For information regarding the applicable provisions of the Act, please contact T. Christian Herren, Jr., Chief, Voting Section, Civil Rights Division, United States Department of Justice, Room 7254–NWB, 950 Pennsylvania Avenue, NW., Washington, DC 20530, by telephone at (800) 253–3931 or visit the Voting Section Internet site at *http://www.justice.gov/crt/about/vot/.*

SUPPLEMENTARY INFORMATION: In July 2006, Congress amended the Voting Rights Act of 1965, Title 42, United States Code (U.S.C.), 1973 *et seq.* (See Pub. L. 109–246, 120 Stat. 577 (2006)). Among other changes, the sunset date for minority language assistance provisions set forth in Section 203 of the Act was extended to August 5, 2032.

Section 203 mandates that a state or political subdivision must provide language assistance to voters if more than five (5) percent of voting age citizens are members of a single-language minority group and do not "speak or understand English adequately enough to participate in the electoral process" and if the rate of those citizens who have not completed the fifth grade is higher than the national rate of voting age citizens who have not completed the fifth grade. When a state is covered for a particular language minority group, an exception is made for any political subdivision in which less than five (5) percent of the voting age citizens are members of the minority group and are limited in English proficiency, unless the political subdivision is covered independently. A political subdivision is also covered if more than 10,000 of the voting age citizens are members of a single-language minority group, do not "speak or understand English adequately enough to participate in the electoral process," and the rate of those citizens who have not completed the fifth grade is higher than the national rate of voting age citizens who have not completed the fifth grade.

Finally, if more than five (5) percent of the American Indian or Alaska Native voting age citizens residing within an American Indian Reservations (and off-reservation trust lands) are members of a single language minority group, do not "speak or understand English adequately enough to participate in the electoral process," and the rate of those citizens who have not completed the fifth grade is higher than the national rate of voting age citizens who have not completed the fifth grade, any political subdivision, such as a county, which contains all or any part of that Indian reservation, is covered by the minority language assistance provision set forth in Section 203. An American Indian Reservation is defined as any area that is an American Indian or Alaska Native area identified for purposes of the decennial census. For the 2010 Census, these areas were identified by the federally recognized tribal governments, Bureau of Indian Affairs, and state governments. The Census Bureau worked with American Indian tribes and Alaska Natives to identify statistical areas, such as Oklahoma Tribal Statistical Areas (OTSA), State Designated Tribal Statistical Areas (SDTSA), and Alaska Native Village Statistical Areas (ANVSA).

Pursuant to Section 203, the Census Bureau Director has the responsibility to determine which states and political subdivisions are subject to the minority language assistance provisions of Section 203. The state and political subdivisions obligated to comply with the requirements are listed in the attachment to this Notice.

Section 203 also provides that the "determinations of the Director of the Census under this subsection shall be effective upon publication in the **Federal Register** and shall not be subject to review in any court." Therefore, as of this date, those jurisdictions that are listed as covered by Section 203 have legal obligation to provide the minority language assistance prescribed in Section 203 of the Act. In the cases, where a state is covered, those counties or county equivalents not displayed in the attachment are exempt from the obligation. Those jurisdictions subject to Section 203 of the Act previously, but not included on the list below, are no longer obligated to comply with Section 203. The previous determinations under Section 4(f)(4) of the Voting Rights Act remain in effect and are unaffected by this determination. (See Title 28, Code of Federal Regulations, part 55, Appendix (2010)).

Dated: October 5, 2011.

Robert M. Groves,

Director, Bureau of the Census.

COVERED AREAS FOR VOTING RIGHTS BILINGUAL ELECTION MATERIALS—2010

State and political subdivision	Language minority group
Alaska:	
Aleutians East Borough	Asian (Filipino).
Aleutians East Borough	Hispanic.
Aleutians West Census Area	Asian (Filipino).
Bethel Census Area	Alaska Native (Inupiat).
Bethel Census Area	Alaska Native (Yup'ik).
Dillingham Census Area	Alaska Native (Yup'ik).
Nome Census Area	Alaska Native (Inupiat).
Nome Census Area	Alaska Native (Yup'ik).
North Slope Borough	Alaska Native Tribe—Tribe not Specified.
North Slope Borough	Alaska Native (Inupiat).

COVERED AREAS FOR VOTING RIGHTS BILINGUAL ELECTION MATERIALS—2010—Continued

State and political subdivision	Language minority group
Northwest Arctic Borough	Alaska Native (Inupiat).
Wade Hampton Census Area	Alaska Native (Inupiat).
Wade Hampton Census Area	Alaska Native (Yup'ik).
Yukon-Koyukuk Census Area	Alaska Native (Alaskan Athabascan).
Arizona:	
Apache County	American Indian (Navajo).
Apache County	American Indian (Pueblo).
Coconino County	American Indian (Hopi).
Coconino County	American Indian (Navajo).
Coconino County	American Indian (Yuma).
Maricopa County	American Indian (Tohono O'Odham).
Maricopa County	Hispanic.
Mohave County	American Indian (Yuma).
Navajo County	American Indian (Hopi).
Navajo County	American Indian (Navajo),
Pima County	American Indian (Tohono O'Odham).
Pima County	American Indian (Yaqui).
Pima County	Hispanic.
Pinal County	American Indian (Tohono O'Odham).
Santa Cruz County	Hispanic.
Yavapai County	American Indian (Yuma).
Yuma County	American Indian (Yuma).
Yuma County	Hispanic.
California:	
State Coverage	Hispanic.
Alameda County	Asian (Chinese).
Alameda County	Asian (Filipino).
Alameda County	Hispanic.
Alameda County	Asian (Vietnamese).
Colusa County	Hispanic.
Contra Costa County	Hispanic.
Fresno County	Hispanic.
Glenn County	Hispanic.
Imperial County	Hispanic.
Kern County	Hispanic.
Kings County	Hispanic.
Los Angeles County	Asian (Asian Indian).
Los Angeles County	Asian (Chinese).
Los Angeles County	Asian (Filipino).
Los Angeles County	Hispanic.
Los Angeles County	Asian (Japanese).
Los Angeles County	Asian (Korean).
Los Angeles County	Asian (Other Asian—Not specified).
Los Angeles County	Asian (Vietnamese).
Madera County	Hispanic.
Merced County	Hispanic.
Monterey County	Hispanic.
Napa County	Hispanic.
Orange County	Asian (Chinese).
Orange County	Hispanic.
Orange County	Asian (Korean).
Orange County	Asian (Vietnamese).
Riverside County	Hispanic.
Sacramento County	Asian (Chinese).
Sacramento County	Hispanic.
San Benito County	Hispanic.
San Bernardino County	Hispanic.
San Diego County	Asian (Chinese).
San Diego County	Asian (Filipino).
San Diego County	Hispanic.
San Diego County	Asian (Vietnamese).
San Francisco County	Asian (Chinese).
San Francisco County	Hispanic.
San Joaquin County	Hispanic.
San Mateo County	Asian (Chinese).
San Mateo County	Hispanic.
Santa Barbara County	Hispanic.
Santa Clara County	Asian (Chinese).
Santa Clara County	Asian (Filipino).
Santa Clara County	Hispanic.
Santa Clara County	Asian (Vietnamese).
Stanislaus County	Hispanic.

COVERED AREAS FOR VOTING RIGHTS BILINGUAL ELECTION MATERIALS—2010—Continued

State and political subdivision	Language minority group
Tulare County	Hispanic.
Ventura County	Hispanic.
Colorado:	
Costilla County	Hispanic.
Denver County	Hispanic.
Rio Grande County	Hispanic.
Connecticut:	
Bridgeport town	Hispanic.
East Hartford town	Hispanic.
Hartford town	Hispanic.
Meriden town	Hispanic.
New Britain town	Hispanic.
New Haven town	Hispanic.
New London town	Hispanic.
Waterbury town	Hispanic.
Windham town	Hispanic.
Florida:	
State Coverage	Hispanic.
Broward County	Hispanic.
Hardee County	Hispanic.
Hendry County	Hispanic.
Hillsborough County	Hispanic.
Lee County	Hispanic.
Miami-Dade County	Hispanic.
Orange County	Hispanic.
Osceola County	Hispanic.
Palm Beach County	Hispanic.
Polk County	Hispanic.
Hawaii:	
Honolulu County	Asian (Chinese).
Honolulu County	Asian (Filipino).
Honolulu County	Asian (Japanese).
Maui County	Asian (Filipino).
Illinois:	
Cook County	Asian (Asian Indian).
Cook County	Asian (Chinese).
Cook County	Hispanic.
DuPage County	Hispanic.
Kane County	Hispanic.
Lake County	Hispanic.
Kansas:	
Finney County	Hispanic.
Ford County	Hispanic.
Grant County	Hispanic.
Seward County	Hispanic.
Maryland:	
Montgomery County	Hispanic.
Massachusetts:	
Boston city	Hispanic.
Chelsea city	Hispanic.
Fitchburg city	Hispanic.
Holyoke city	Hispanic.
Lawrence city	Hispanic.
Lowell city	Hispanic.
Lynn city	Hispanic.
Quincy city	Asian (Chinese).
Revere city	Hispanic.
Southbridge town	Hispanic.
Springfield city	Hispanic.
Worcester city	Hispanic.
Michigan:	
Clyde township [1]	Hispanic.
Hamtramck city	Asian (Bangladeshi).
Hartford city	Hispanic.
Mississippi:	
Attala County	American Indian (Choctaw).
Jackson County	American Indian (Choctaw).
Jones County	American Indian (Choctaw).
Kemper County	American Indian (Choctaw).
Leake County	American Indian (Choctaw).
Neshoba County	American Indian (Choctaw).
Newton County	American Indian (Choctaw).

COVERED AREAS FOR VOTING RIGHTS BILINGUAL ELECTION MATERIALS—2010—Continued

State and political subdivision	Language minority group
Noxubee County	American Indian (Choctaw).
Scott County	American Indian (Choctaw).
Winston County	American Indian (Choctaw).
Nebraska:	
Colfax County	Hispanic.
Dakota County	Hispanic.
Dawson County	Hispanic.
Nevada:	
Clark County	Asian (Filipino).
Clark County	Hispanic.
New Jersey:	
Bergen County	Hispanic.
Bergen County	Asian (Korean).
Camden County	Hispanic.
Cumberland County	Hispanic.
Essex County	Hispanic.
Hudson County	Hispanic.
Middlesex County	Hispanic.
Passaic County	Hispanic.
Union County	Hispanic.
New Mexico:	
Bernalillo County	American Indian (Navajo).
Bernalillo County	American Indian (Pueblo).
Bernalillo County	Hispanic.
Catron County	American Indian (Pueblo).
Chaves County	Hispanic.
Cibola County	American Indian (Navajo).
Cibola County	American Indian (Pueblo).
Doña Ana County	Hispanic.
Eddy County	Hispanic.
Grant County	Hispanic.
Guadalupe County	Hispanic.
Harding County	Hispanic.
Hidalgo County	Hispanic.
Lea County	Hispanic.
Luna County	Hispanic.
McKinley County	American Indian (Navajo).
McKinley County	American Indian (Pueblo).
Mora County	Hispanic.
Rio Arriba County	American Indian (Navajo).
Rio Arriba County	Hispanic.
San Juan County	American Indian (Navajo).
San Miguel County	Hispanic.
Sandoval County	American Indian (Navajo).
Sandoval County	American Indian (Pueblo).
Santa Fe County	American Indian (Pueblo).
Socorro County	American Indian (Navajo).
Socorro County	American Indian (Pueblo).
Socorro County	Hispanic.
Taos County	Hispanic.
Valencia County	American Indian (Pueblo).
Valencia County	Hispanic.
New York:	
Bronx County	Hispanic.
Kings County	Asian (Chinese).
Kings County	Hispanic.
Nassau County	Hispanic.
New York County	Asian (Chinese).
New York County	Hispanic.
Queens County	Asian (Asian Indian).
Queens County	Asian (Chinese).
Queens County	Hispanic.
Queens County	Asian (Korean).
Suffolk County	Hispanic.
Westchester County	Hispanic.
Pennsylvania:	
Berks County	Hispanic.
Lehigh County	Hispanic.
Philadelphia County	Hispanic.
Rhode Island:	
Central Falls city	Hispanic.
Pawtucket city	Hispanic.

COVERED AREAS FOR VOTING RIGHTS BILINGUAL ELECTION MATERIALS—2010—Continued

State and political subdivision	Language minority group
Providence city	Hispanic.
Texas:	
State Coverage	Hispanic.
Andrews County	Hispanic.
Atascosa County	Hispanic.
Bailey County	Hispanic.
Bee County	Hispanic.
Bexar County	Hispanic.
Brewster County	Hispanic.
Brooks County	Hispanic.
Caldwell County	Hispanic.
Calhoun County	Hispanic.
Cameron County	Hispanic.
Castro County	Hispanic.
Cochran County	Hispanic.
Concho County	Hispanic.
Crane County	Hispanic.
Crockett County	Hispanic.
Crosby County	Hispanic.
Culberson County	Hispanic.
Dallas County	Hispanic.
Dawson County	Hispanic.
Deaf Smith County	Hispanic.
Dimmit County	Hispanic.
Duval County	Hispanic.
Ector County	Hispanic.
Edwards County	Hispanic.
El Paso County	American Indian (Pueblo).
El Paso County	Hispanic.
Floyd County	Hispanic.
Fort Bend County	Hispanic.
Frio County	Hispanic.
Gaines County	Hispanic.
Garza County	Hispanic.
Glasscock County	Hispanic.
Gonzales County	Hispanic.
Guadalupe County	Hispanic.
Hale County	Hispanic.
Hansford County	Hispanic.
Harris County	Asian (Chinese).
Harris County	Hispanic.
Harris County	Asian (Vietnamese).
Hidalgo County	Hispanic.
Hockley County	Hispanic.
Hudspeth County	Hispanic.
Jim Hogg County	Hispanic.
Jim Wells County	Hispanic.
Karnes County	Hispanic.
Kenedy County	Hispanic.
Kinney County	Hispanic.
Kleberg County	Hispanic.
La Salle County	Hispanic.
Lamb County	Hispanic.
Live Oak County	Hispanic.
Lynn County	Hispanic.
Martin County	Hispanic.
Maverick County	American Indian (Kickapoo).
Maverick County	Hispanic.
Medina County	Hispanic.
Midland County	Hispanic.
Mitchell County	Hispanic.
Moore County	Hispanic.
Nolan County	Hispanic.
Nueces County	Hispanic.
Ochiltree County	Hispanic.
Parmer County	Hispanic.
Pecos County	Hispanic.
Presidio County	Hispanic.
Reagan County	Hispanic.
Reeves County	Hispanic.
Refugio County	Hispanic.
Runnels County	Hispanic.

COVERED AREAS FOR VOTING RIGHTS BILINGUAL ELECTION MATERIALS—2010—Continued

State and political subdivision	Language minority group
San Patricio County	Hispanic.
San Saba County	Hispanic.
Schleicher County	Hispanic.
Scurry County	Hispanic.
Sherman County	Hispanic.
Starr County	Hispanic.
Sutton County	Hispanic.
Swisher County	Hispanic.
Tarrant County	Hispanic.
Terrell County	Hispanic.
Terry County	Hispanic.
Titus County	Hispanic.
Travis County	Hispanic.
Upton County	Hispanic.
Uvalde County	Hispanic.
Val Verde County	Hispanic.
Ward County	Hispanic.
Webb County	Hispanic.
Willacy County	Hispanic.
Wilson County	Hispanic.
Winkler County	Hispanic.
Yoakum County	Hispanic.
Zapata County	Hispanic.
Zavala County	Hispanic.
Utah:	
Salt Lake County	Hispanic.
San Juan County	American Indian (Navajo).
Virginia:	
Fairfax County	Hispanic.
Washington:	
Adams County	Hispanic.
Franklin County	Hispanic.
King County	Asian (Chinese).
King County	Asian (Vietnamese).
Yakima County	Hispanic.
Wisconsin:	
Milwaukee City	Hispanic.

[1] Clyde Township in Allegan County.

[FR Doc. 2011–26293 Filed 10–12–11; 8:45 am]
BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Sensors and Instrumentation Technical Advisory Committee; Notice of Partially Closed Meeting

The Sensors and Instrumentation Technical Advisory Committee (SITAC) will meet on October 25, 2011, 9:30 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to sensors and instrumentation equipment and technology.

Agenda

Public Session

1. Welcome and Introductions.
2. Remarks from the Bureau of Industry and Security Management.
3. Industry Presentations.
4. New Business.

Closed Session

5. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first served basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov* no later than October 18, 2011.

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that the materials be forwarded before the meeting to Ms. Springer.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on September 27, 2011 pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § 10(d), that the portion of this meeting dealing with pre-decisional changes to the Commerce Control List and U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information contact Yvette Springer on (202) 482–2813.

Dated: October 3, 2011.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2011–26009 Filed 10–12–11; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 92–10A01]

Export Trade Certificate of Review

ACTION: Notice of Application (92–10A01) to amend the Export Trade Certificate of Review Issued to Aerospace Industries Association of America Inc.

SUMMARY: The Office of Competition and Economic Analysis ("OCEA") of the International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review ("Certificate"). This notice summarizes the proposed amendment and requests comments relevant to whether the amended Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Joseph Flynn, Director, Office of Competition and Economic Analysis, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or e-mail at *etca@trade.gov*.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked as privileged or confidential business information will be deemed to be nonconfidential.

An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 7021–X, Washington, DC 20230.

Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 92–10A01."

The Aerospace Industries Association of America Inc. ("AIAA") original Certificate was issued on September 8, 1992 (57 FR 41920, September 14, 1992). A summary of the current application for an amendment follows.

Summary of the Application

Applicant: Aerospace Industries Association of America Inc. ("AIAA"), 1000 Wilson Boulevard, Suite 1700, Arlington, VA 22209.

Contact: Matthew F. Hall, Attorney, Telephone: (206)862–9700.

Application No.: 92–10A01.

Date Deemed Submitted: September 27, 2011.

Proposed Amendment: AIAA seeks to amend its Certificate to:

1. Add the following companies as new Members of the Certificate within the meaning of section 325.2(l) of the Regulations (15 CFR 325.2(l)): Aero-Mark, LLC (Ontario, CA); Aero Vironment, Inc. (Monrovia, CA); AGC Aerospace & Defense (Oklahoma City, OK); AlliedBarton Security Services, LLC (Conshohocken, PA); Castle Metals Aerospace (Oakbrook, IL); CERTON Software, Inc. (Melbourne, FL); CIRCOR International, Inc. (Burlington, MA); Colt Defense, LLC (West Hartford, CT); Comtech Consulting Inc. (Ashburn, VA); Crown Consulting, Inc. (Arlington, VA); Cubic Defense Applications, Inc. (San Diego, CA); DitigalGlobe, Inc. (Longmont, CO); Galactic Ventures, LLC (Las Cruces, NM); Gentex Corporation (Zeeland, MI); HCL America Inc. (Sunnyvale, CA); Hi-Shear Technology Corporation (Torrance, CA); Hydra Electric Company (Burbank, CA); IEC Electronics Corporation (Newark, NJ); Infotech Enterprises America Inc. (East Hartford, CT); Kemet Electronics Corporations (Simpsonville, SC); Metron Aviation (Dulles, VA); O'Neil & Associates Inc. (Miamisburg, OH); NobleTek (Wooster, OH); Parametric Technology Corporation (Needham, MA); PARTsolutions, LLC (Milford, OH); Qwaltec, Inc. (Tempe, AZ); RAF Tabtronics LLC (Deland, FL); Realization Technologies Inc. (San Jose, CA); Rhinestahl Corporation (Mason, OH); Rix Industries (Beneccia, CA); Sanima-SCI Corporation (San Jose, CA); Santair USA Inc. (Atlanta, GA); SCB Training Inc. (Santa Fe Springs, CA); SIFCO Industries Inc. (Cleveland, OH); Sila Solutions Group (Tukwila, WA); The SI Organization Inc. (King of Prussia, PA); Valent Aerostructures, LLC (Kansas City, MO); and Wesco Aircraft Hardware Corporation (Valencia, CA).

2. Delete the following companies as Members of WMMA's Certificate: BreconRidge Corporation; M–7 Aerospace L.P; McKechnie Aerospace; Microsemi Corporation; Technigraphics, Inc; Triumph Aerostructures—Vought Aircraft Division.

3. Change in name or address for the following Members: Timken Aerospace Transmissions LLC (Manchester, CT) has changed its name to Timken Aerospace Transmissions LLC; and Meggitt Vibro-Meter, Inc. has moved from Manchester, NH to Londonderry, NH.

Dated: October 6, 2011.

Joseph E. Flynn,

Director, Office of Competition and Economic Analysis.

[FR Doc. 2011–26502 Filed 10–12–11; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 10–1A001]

Export Trade Certificate Of Review

ACTION: Notice of issuance of an Export Trade Certificate of Review to Alaska Longline Cod Commission, Application no. 10–1A001.

SUMMARY: The U.S. Department of Commerce issued an amended Export Trade Certificate of Review Alaska Longline Cod Commission ("ALCC") on September 21, 2011. This is the first amendment to the Certificate. The Alaska Longline Cod Commission's ("ALCC") original Certificate was issued on May 13, 2010 (75 FR 29514, May 26, 2010).

FOR FURTHER INFORMATION CONTACT: Joseph E. Flynn, Director, Office of Competition and Economic Analysis, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number) or e-mail at *etca@trade.gov*.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (2010). The U.S. Department of Commerce, International Trade Administration, Office of Competition and Economic Analysis ("OCEA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Secretary of Commerce to publish a summary of the issuance in the **Federal Register**. Under Section 305(a) of the Export Trading Company Act (15 U.S.C. 4012(b)(1)) and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

ALCC's Export Trade Certificate of Review has been amended to:

1. Add the following company as new Member of the Certificate within the meaning of section 325.2(l) of the Regulations (15 CFR 325.2(l)): Siu Alaska Corporation (Anchorage, AK).

2. Delete the following companies as Members of WMMA's Certificate: Glacier Bay Fisheries LLC (Seattle, WA); and Glacier Fish Company LLC (Seattle, WA).

The effective date of the amended certificate is June 23, 2011, the date on which ALCC's application to amend was deemed submitted. A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4001, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: October 6, 2011.

Joseph E. Flynn,

Office Director, Office of Competition and Economic Analysis.

[FR Doc. 2011–26490 Filed 10–12–11; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA760

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Joint Whiting Oversight and Advisory Panel in November, 2011 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will be held on Thursday November 3, 2011 at 10 a.m.

ADDRESSES: The meeting will be held at the Hotel Providence, 139 Mathewson Street, Providence, RI 02903: Telephone: (401) 861–8000; fax: (401) 861–8002.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Advisory Panel and Oversight Committee will review an initial a Draft Amendment 19 document and possibly recommend preferred or modified alternatives. The recommendations will be forwarded to the Council at the November 2011 Council meeting. Amendment 19 includes alternatives for annual catch limits, accountability measures, a specifications process, total allowable landings (TAL) allocations, incidental possession limits when landings reach a high fraction of the TAL, and red hake possession limits.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: October 7, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–26460 Filed 10–12–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA597

Marine Mammals; File No. 16443

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that a permit has been issued to David Honig, Nicholas School of the Environment, Duke University Marine Laboratory, 135 Marine Lab Road, Beaufort, NC 28516 to collect, receive, import, export, possess, and conduct analyses on marine mammal specimens for scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)427–8401; fax (301)713–0376; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, FL 33701; phone (727)824–5312; fax (727)824–5309.

FOR FURTHER INFORMATION CONTACT: Laura Morse or Jennifer Skidmore, (301) 427–8401.

SUPPLEMENTARY INFORMATION: On July 28, 2011 notice was published in the **Federal Register** (76 FR 45232) that a request for a permit to collect and import specimens for scientific research had been submitted by the above-named applicant. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), 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 parts 222–226).

The permit authorizes collection, import, export, possession, and analyses of bones of sperm (*Physeter macrocephalus*) and minke (*Balaenoptera acutorostrata*) whales which originated from Sweden and Chile. Collection will involve retrieval of a lander on which the whale bones have been placed on the bottom of the Weddell Sea, Antarctica by foreign researchers and under other

authorizations. Bones would be imported into the U.S. for analyses. No live animal takes are authorized and no incidental harassment of animals would occur. The permit is valid for five years from the date of issuance.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

As required by the ESA, issuance of this permit was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: October 7, 2011.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–26497 Filed 10–12–11; 8:45 am]

BILLING CODE 3510–22–P

CONSUMER PRODUCT SAFETY COMMISSION

Notice of Meeting of Chronic Hazard Advisory Panel on Phthalates and Phthalate Substitutes

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of meeting.

SUMMARY: The U.S. Consumer Product Safety Commission ("CPSC" or "Commission") announces the sixth meeting of the Chronic Hazard Advisory Panel (CHAP) on phthalates and phthalate substitutes. The Commission appointed this CHAP to study the effects on children's health of all phthalates and phthalate alternatives as used in children's toys and child care articles, pursuant to section 108 of the Consumer Product Safety Improvement Act of 2008 (CPSIA) (Pub. L. 110–314).

DATES: The meeting will be held on Wednesday, November 2 through Friday, November 4, 2011. The meeting will begin at approximately 9 a.m. each day. It will end at approximately 5 p.m. on Wednesday and Thursday, and at approximately 2 p.m. on Friday.

ADDRESSES: The meeting will be held in the fourth floor hearing room at the Commission's offices at 4330 East West Highway, Bethesda, MD.

Registration and Webcast: Members of the public who wish to attend the meeting in person may register on the day of the meeting. This meeting will also be available live via webcast at: *http://www.cpsc.gov/Webcast.* Registration is not necessary to view the webcast. There will not be any opportunity for public participation at this meeting.

FOR FURTHER INFORMATION CONTACT: Michael Babich, Directorate for Health Sciences, Consumer Product Safety Commission, Bethesda, MD 20814; telephone (301) 504–7253; e-mail *mbabich@cpsc.gov.*

SUPPLEMENTARY INFORMATION: Section 108 of the CPSIA permanently prohibits the sale of any "children's toy or child care article" containing more than 0.1 percent of each of three specified phthalates: di-(2-ethylhexyl) phthalate (DEHP), dibutyl phthalate (DBP), and benzyl butyl phthalate (BBP). Section 108 also prohibits on an interim basis, the sale of any "children's toy that can be placed in a child's mouth" or "child care article" containing more than 0.1 percent of each of three additional phthalates: diisononyl phthalate (DINP), diisodecyl phthalate (DIDP), and di-*n*-octyl phthalate (DNOP).

Moreover, section 108 of the CPSIA requires the Commission to convene a CHAP "to study the effects on children's health of all phthalates and phthalate alternatives as used in children's toys and child care articles." The CPSIA requires the CHAP to complete an examination of the full range of phthalates that are used in products for children and:

- Examine all of the potential health effects (including endocrine disrupting effects) of the full range of phthalates;
- Consider the potential health effects of each of these phthalates, both in isolation, and in combination with other phthalates;
- Examine the likely levels of children's, pregnant women's, and others' exposure to phthalates, based upon a reasonable estimation of normal and foreseeable use and abuse of such products;
- Consider the cumulative effect of total exposure to phthalates, from children's products and from other sources, such as personal care products;
- Review all relevant data, including the most recent, best available, peer-reviewed, scientific studies of these phthalates and phthalate alternatives that employ objective data-collection practices or employ other objective methods;
- Consider the health effects of phthalates, not only from ingestion, but also as a result of dermal, hand-to-mouth, or other exposure;
- Consider the level at which there is a reasonable certainty of no harm to children, pregnant women, or other susceptible individuals and their offspring, reviewing the best available science, and using sufficient safety factors to account for uncertainties regarding exposure and susceptibility of children, pregnant women, and other potentially susceptible individuals; and
- Consider possible similar health effects of phthalate alternatives used in children's toys and child care articles.

The CPSIA contemplates completion of the CHAP's examination within 18 months of the panel's appointment, followed by an additional 6 months to complete their final report. The CHAP's final report is expected in April 2012.

The CHAP must make recommendations to the Commission about which phthalates, or combinations of phthalates (in addition to those identified in section 108 of the CPSIA), or phthalate alternatives that the panel determines should be prohibited from use in children's toys or child care articles or otherwise restricted. The Commission selected the CHAP members from scientists nominated by the National Academy of Sciences. See 15 U.S.C. 2077, 2030(b).

The CHAP met previously in April, July, and December 2010, and in March and July 2011. The CHAP heard testimony from interested parties at the July meeting. The November meeting will include invited speakers on Wednesday morning, followed by a discussion of the CHAP's progress on its report. There will not be any opportunity for public comment at the November 2011 meeting.

Dated: October 7, 2011.

Todd A. Stevenson,

Secretary.

[FR Doc. 2011–26450 Filed 10–12–11; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: Wednesday, October 19, 2011, 9 a.m.—12 p.m.

PLACE: Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Commission Meeting—Open to the Public.

Matters to be Considered

Decisional Matters:

(1) Testing & Certification/ Components Parts Final Rules;

(2) Representative—Notice of

Proposed Rulemaking; and
(3) **Federal Register** Notice on H.R. 2715 Questions.

A live Web cast of the Meeting can be viewed at *http://www.cpsc.gov/webcast.*

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: October 12, 2011.

Todd A. Stevenson,

Secretariat.

[FR Doc. 2011–26606 Filed 10–11–11; 4:15 pm]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

DATES: *Time And Date:* Wednesday, October 19, 2011; 2 p.m.—3 p.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

Matter To Be Considered

Compliance Status Report

The Commission staff will brief the Commission on the status of compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: October 11, 2011.

Todd A Stevenson,

Secretariat.

[FR Doc. 2011–26607 Filed 10–11–11; 4:15 pm]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

AGENCY: U.S. Consumer Product Safety Commission.

Federal Register *Citation of Previous Announcement:* Vol. 76, No. 195, Friday, October 7, 2011, pages 62393–62394.

Announced Time and Date of Open Meeting: 9 a.m.–12 p.m., Wednesday October 12, 2011.

Changes to Open Meeting: Meeting Deferred until Wednesday, October 19, 2011, 9 a.m.–12 p.m.

Announced Time and Date of Closed Meeting: 2–3 p.m., Wednesday September 21, 2011.

Closed Meeting: Time Change: 10 a.m.–11 a.m.

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Todd A. Stevenson, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20814 (301) 504–7923.

Dated: October 11, 2011.

Todd A. Stevenson,

Secretary.

[FR Doc. 2011–26605 Filed 10–11–11; 4:15 pm]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Military Personnel Testing; Notice of Meeting

AGENCY: Under Secretary of Defense for Personnel and Readiness, Department of Defense (DoD).

ACTION: Meeting notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the following Federal advisory committee meeting of the Defense Advisory Committee on Military Personnel Testing will take place.

DATES: Thursday, November 3, 2011, from 8:30 a.m. to 4 p.m. and Friday, November 4, 2011, from 8:30 a.m. to 12 p.m.

ADDRESSES: The meeting will be held at the Hotel Albuquerque at Old Town, 800 Rio Grande Boulevard NW., Albuquerque, NM 87104.

FOR FURTHER INFORMATION CONTACT: Committee's Designated Federal Officer or Point of Contact: Dr. Jane M. Arabian, Assistant Director, Accession Policy, Office of the Under Secretary of Defense (Personnel and Readiness), Room 3D1066, The Pentagon, Washington, DC 20301–4000, telephone (703) 697–9271.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: The purpose of the meeting is to review planned changes and progress in developing computerized and paper-and-pencil tests for military enlistment.

Agenda: The agenda includes an overview of current enlistment test development timelines and planned research for the next 3 years.

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public.

Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Dr. Jane M. Arabian at the address or telephone number in **FOR FURTHER INFORMATION CONTACT** no later than November 1, 2011.

Dated: October 7, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–26443 Filed 10–12–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2011–0025]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, Department of Defense (DoD).

ACTION: Notice to delete a system of records.

SUMMARY: The Department of the Army is deleting a system of records notice from its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on November 14, 2011 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://*

www.regulations.gov as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Leroy Jones, Department of the Army, Privacy Office, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905, or by phone at (703) 428–6185.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the Federal Register and are available from the address in **FOR FURTHER INFORMATION CONTACT.**

The Department of the Army proposes to delete one system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: October 6, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletion:

A0350–20 TRADOC, Standardized Student Records System (October 1, 2008, 73 FR 57073)

REASON:

The Army Standardized Student Records System is now covered under a new system identifier, A0350–20a TRADOC, October 5, 2011, 76 FR 61680–61682, due to major changes in fifteen categories in the SORN; therefore the notice can be deleted.

[FR Doc. 2011–26396 Filed 10–12–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

National Committee on Foreign Medical Education and Accreditation Meeting

AGENCY: National Committee on Foreign Medical Education and Accreditation, Office of Postsecondary Education, U.S. Department of Education

What is the purpose of this notice?

The purpose of this notice is to announce the upcoming meeting of the National Committee on Foreign Medical Education and Accreditation (NCFMEA). For each country reviewed, the staff presentations, country representative presentations, and some Committee deliberations are open to the public, and the public is invited to attend those portions.

When and where will the meeting take place?

The public meeting will be held on Friday, October 21, 2011, from 8 a.m. until approximately 5 p.m., U.S. Department of Education, Potomac Center Plaza Building, 550 Twelfth Street, SW., Washington, DC 20202. Due to security restrictions, all attendees must pre-register. Please e-mail your registration request to *aslrecordsmanager@ed.gov* by October 14, 2011, and include "NCFMEA Meeting Registration" in the subject line. Your request should include your name, title, affiliation, mailing address, e-mail address, telephone and facsimile numbers, and Web site (if any) of the person/group requesting registration. Also, since all audience members will need to be escorted within the building, please bring an identification card with your picture on it to the NCFMEA table that will be set up in the building's lobby. If you have any questions about the meeting registration process, please e-mail the contact person listed below prior to October 14, 2011.

What assistance will be provided to individuals with disabilities?

The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (*e.g.*, interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice by October 14, 2011. Although we will attempt to meet a request received after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Who is the contact person for the meeting?

Please contact Melissa Lewis, the Executive Director for the NCFMEA, if you have questions about the meeting. You may contact her at the U.S. Department of Education, 1990 K St. NW., Room 8060, Washington, DC 20006–8129, telephone: 202–219–7009, fax: 202–219–7005, e-mail: *Melissa.Lewis@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339.

What are the functions of the NCFMEA?

The NCFMEA was established by the Secretary of Education under Section 102 of the Higher Education Act of 1965, as amended. The NCFMEA's responsibilities are to:

- Upon request of a foreign country, evaluate the standards of accreditation applied to medical schools in that country; and,
- Determine the comparability of those standards to standards for accreditation applied to United States medical schools. Comparability of the applicable accreditation standards is an eligibility requirement for foreign medical schools to participate in the Federal Family Education Loan Program, 20 U.S.C. 1071 *et seq.*

What items will be on the agenda for discussion at the meeting?

The Committee will review the standards of accreditation applied to medical schools by several foreign countries to determine whether those standards are comparable to the standards of accreditation applied to medical schools in the United States. Discussions of the standards of accreditation will be held in sessions open to the public. Discussions resulting in specific determinations of comparability are closed to the public in order that each country may be properly notified of the decision. The countries scheduled to be discussed at the meeting include: Czech Republic, Dominica, Dominican Republic, Hungary, The Netherlands, Mexico, Philippines, Poland, and St. Maarten. The meeting agenda, as well as the staff analyses pertaining to this meeting, will be posted on the Department of Education's Web site at the following address: *http://www.ed.gov/about/bdscomm/list/ncfmea.html.*

How may I obtain electronic access to this document?

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

You may also access documents of the Department published in the **Federal Register** by using the article search

feature at: *http://www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Eduardo M. Ochoa,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2011–26504 Filed 10–12–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board Natural Gas Subcommittee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Secretary of Energy Advisory Board (SEAB) Natural Gas Subcommittee. SEAB was reestablished pursuant to the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) (the Act). This notice is provided in accordance with the Act.

DATES: Monday, October 31, 2011; 10 a.m.–12 p.m., 1 p.m.–3 p.m., Tuesday, November 1, 2011; 10 a.m.–12 p.m.

ADDRESSES: Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Renee Stone, Deputy Designated Federal Officer, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; *shalegas@hq.doe.gov or www.shalegas.energy.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Subcommittee was established to provide recommendations to the SEAB on how to improve the safety and environmental performance of natural gas hydraulic fracturing from shale formations thereby harnessing a vital domestic energy resource while ensuring the safety of citizen's drinking water and the health of the environment. President Obama directed Secretary Chu to convene this group as part of the President's "*Blueprint for a Secure Energy Future*"—a comprehensive plan to reduce America's oil dependence, save consumers money, and make our country the leader in clean energy industries.

Purpose of the Meeting

The purpose of this meeting is to allow subcommittee members to discuss progress on implementation of recommendations and further steps that can be taken to improve the process.

Tentative Agenda

The meeting will start at 10 a.m. on October 31, 2011. The tentative meeting agenda includes discussion regarding implementation of recommendations and next steps. The meeting will conclude at 3 p.m. The second meeting, November 1, 2011, will begin at 10 a.m. The tentative meeting agenda includes continued discussion regarding implementation of recommendations and next steps. The meeting will conclude at 12 p.m.

Public Participation

These meetings are open to the public. Individuals who would like to attend must RSVP by e-mail to: *shalegas@hq.doe.gov,* no later than 5:00 p.m. on Thursday, October 27, 2011, for both meetings. Please provide your name, organization, citizenship, and contact information. Space is limited. Anyone attending the meeting will be required to present government issued identification. Individuals and representatives of organizations who would like to offer comments and suggestions may do so at the end of the meeting on Monday, October 31, 2011 and Tuesday, November 1, 2011. Approximately 30 minutes will be reserved each day for public comments. Time allotted per speaker will depend on the number of individuals who wish to speak but will not, in any circumstance, exceed five minutes. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Those wishing to speak should register to do so beginning at 9:45 a.m. on October 31, 2011 and 9:45 a.m. on November 1, 2011.

Those not able to attend the meeting or have insufficient time to address the committee are invited to send a written statement to Renee Stone, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, or by e-mail to: *shalegas@hq.doe.gov,* or post on the subcommittee Web site at: *http://www.shalegas.energy.gov.*

Issued in Washington, DC, on October 7, 2011.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2011–26464 Filed 10–12–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, November 3, 2011; 9 a.m.–5 p.m.

Friday, November 4, 2011; 8:30 a.m.–4 p.m.

ADDRESSES: Red Lion Hotel, North 1101 Columbia Center Boulevard, Kennewick, WA 99336.

FOR FURTHER INFORMATION CONTACT: Paula Call, Federal Coordinator, Department of Energy Richland Operations Office, 825 Jadwin Avenue, P.O. Box 550, A7–75, Richland, WA 99352; Phone: (509) 376–2048; or E-mail: *Paula.Call@rl.doe.gov.*

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

- Potential Board Advice:
  - Proposed Changes to the Tri-Party Agency Community Relations Plan (Hanford Public Involvement Plan).
  - 2011 Hanford Lifecycle Scope, Schedule, and Cost Report.
  - Draft 100–K Proposed Plan.
- Agency Updates (Office of River Protection and Richland Operations Office; Washington State Department of Ecology; U.S. Environmental Protection Agency).
- Committee Updates, including: Tank Waste Committee; River and Plateau Committee; Health, Safety and Environmental Management Committee; Public Involvement and Communications Committee; and Budgets and Contracts Committee.
- DOE-led Discussion: Fiscal Year 2012 board budget, conflict of interest guidelines, and 2012 membership reappointment process.
- DOE Presentation: Tank Vapor Monitoring.
- Pacific Northwest National Laboratory Presentation: Advanced Simulation Capability for EM/Groundwater Modeling.
- Board Business:

○ Update to the Hanford Advisory Board Process Manuel regarding Issue Manager/Advice Development Process.

○ Finalize FY 2012 work plan and calendar.

○ Process Manual Revisions Discussion.

Public Participation: The meeting is open to the public. The EM SSAB, Hanford, 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 Paula Call at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Paula Call at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Paula Call's office at the address or phone number listed above. Minutes will also be available at the following Web site: *http://www.hanford.gov/page.cfm/hab.*

Issued at Washington, DC on October 7, 2011.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011–26475 Filed 10–12–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Efficiency and Renewable Energy

Biomass Research and Development Technical Advisory Committee

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

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Biomass Research and Development Technical Advisory Committee under section 9008(d) of the Food, Conservation, and Energy Act of 2008. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that agencies publish these notices in the **Federal Register** to allow for public participation.

DATES AND TIMES: November 8, 2011; 8:30 a.m.–5:30 p.m.

November 9, 2011; 8:30 a.m.–12:30 p.m.

ADDRESSES: Melrose Hotel—DC, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Elliott Levine, Designated Federal Officer, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; (202) 586–1476; *E-mail: Elliott.Levine@ee.doe.gov* or Roy Tiley at (410) 997–7778 ext. 220; *E-mail: rtiley@bcs-hq.com.*

SUPPLEMENTARY INFORMATION: *Purpose of Meeting:* To provide advice and guidance that promotes research and development leading to the production of biobased fuels and biobased products.

Tentative Agenda: Agenda Will Include the Following

- Update on USDA Biomass R&D Activities;
- Update on DOE Biomass R&D Activities;
- Presentation on Current Biomass Solicitation Processes;
- Presentation on the Defense Production Act Title III Technology for Advanced Drop-in Biofuels Production;
- Presentation on the National Biofuels Action Plan.

Public Participation: In keeping with procedures, members of the public are welcome to observe the business of the Biomass Research and Development Technical Advisory Committee. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, you must contact Elliott Levine at (202) 586–7766; *E-mail: Elliott.Levine@ee.doe.gov* or Roy Tiley at (410) 997–7778 ext. 220; *E-mail: rtiley@bcs-hq.com* at least 5 business days prior to the meeting. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Co-chairs of the Committee will make every effort to hear the views of all interested parties. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. The Co-chairs will conduct the meeting to facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying at *http://biomassboard.gov/committee/meetings.html.*

Issued at Washington, DC on October 7, 2011.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011–26476 Filed 10–12–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–21–000]

Agua Caliente Solar, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Agua Caliente Solar, 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 25, 2011.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 5, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–26375 Filed 10–12–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL11–29–000]

Atlantic Path 15, LLC; Notice of Initiation of Proceeding and Refund Effective Date

On April 19, 2011, the Commission issued an order that initiated a proceeding in Docket No. EL11–29–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2006), to determine the justness and reasonableness of Atlantic Path 15, LLC's proposed rate reduction to its transmission revenue requirement. *Atlantic Path 15, LLC,* 135 FERC ¶ 61,037 (2011).

The refund effective date in Docket No. EL11–29–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Dated: October 5, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–26374 Filed 10–12–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2011–0842; FRL–8891–9]

Environmental Science Center Microbiology Laboratory; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. EPA invites interested stakeholders to participate in a laboratory-based technical workshop that will focus on the conduct of the Association of Official Analytical Chemists (AOAC) Use-dilution method (UDM) and the status and implementation of a new test method, the Organization for Economic Cooperation and Development (OECD) Quantitative Method for Evaluating Bactericidal Activity of Microbicides Used on Hard, Non-Porous Surfaces. The workshop is being held to discuss current and proposed revisions mainly associated with the *Staphyloccocus aureus* and *Pseudomonas aeruginosa* methodologies. The goals of the workshop are to provide a comprehensive review and discussion period on the status of the UDM and OEDC methods integrated with hands-on laboratory demonstrations. An overview of various data sets and collaborative studies will be used to supplement the discussions which will be held at the EPA Environmental Science Center Microbiology Laboratory.

DATES: The meeting will be held on November 15 and 16, 2011 from 8:30 a.m. to 4 p.m. Requests to participate in the meeting must be received on or before November 4, 2011. To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATON CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held at the Environmental Protection Agency's Environmental Science Center, 701 Mapes Road, Ft. Meade, Maryland 20755–5350. Requests to participate in the meeting, identified by docket identification (ID) number EPA–HQ–OPP–2011–0842, may be submitted to the person listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Michele Cottrill, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (410) 305–2955; fax number: (410) 305–3094; e-mail address: *cottrill.michele@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you represent antimicrobials product registrants, healthcare facilities who use antimicrobial products, Professional associations for healthcare officials. Potentially affected entities may include, but are not limited to those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How can I get copies of this document and other related information?

EPA has established a docket for this action under docket ID number EPA–HQ–OPP–2011–0842. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

II. Background

The AOAC Use-dilution method (UDM), is currently accepted by EPA for regulatory purposes to measure the efficacy of liquid hospital disinfectants against *Staphyloccocus aureus, Pseudomonas aeruginosa* and *Salmonella enterica* on hard non-porous surfaces. In addition to using the method for registration purposes, the method is currently in use as part of the post market Antimicrobials Testing Program. The workshop is being held to discuss current and proposed revisions mainly associated with the *S. aureus* and *P. aeruginosa* methodologies, which are designed to further optimize and standardize the UDM, and to discuss the data associated with these revisions. At the workshop, the UDM method will be discussed along with the status and implementation of a new test method, the OECD Quantitative Method for Evaluating Bactericidal Activity of Microbicides Used on Hard, Non-Porous

Surfaces (OECD method), will be discussed. The OECD Method recently underwent a multi-laboratory ring trial and the EPA is interested in adopting the OECD method for regulatory purposes. The method is based on test guidelines from the (OECD), an intergovernmental organization consisting of 30 industrialized countries in Europe, North America, Asia and the Pacific. Through its Environment Program, OECD works to help countries manage the risks of chemicals as efficiently and effectively as possible.

This is a technical meeting for individuals with laboratory expertise in conducting the UDM and OECD procedures or who plan to conduct these methods in the future. Participants must be knowledgeable of the safety practices and procedures for working in a Biosafety Level II laboratory environment in order to participate in the laboratory demonstrations. The detailed agenda for the workshop is available in the docket. The Agency is encouraging participation from a cross-section of affected parties including industry, state and federal partners, and testing laboratories. Due to space constraints in the laboratory, attendance will be limited to 30 total participants, with a maximum of 20 participating in the laboratory exercises.

III. How can I request to participate in this meeting?

You may submit a request to participate in this meeting to the person listed under **FOR FURTHER INFORMATION CONTACT**. Do not submit any information in your request that is considered CBI. Requests to participate in the meeting, identified by docket ID number EPA–HQ–OPP–2011–0842, must be received on or before November 4, 2011.

List of Subjects

Environmental protection, Association of Official Analytical Chemists (AOAC), Public health claims, Use-dilution method.

Dated: October 6, 2011.

Joan Harrigan-Farrelly,

Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. 2011–26532 Filed 10–12–11; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

SES Performance Review Board; Appointment of Members

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members to the Performance Review Board of the Equal Employment Opportunity Commission.

FOR FURTHER INFORMATION CONTACT: Lisa M. Williams, Chief Human Capital Officer, U.S. Equal Employment Opportunity Commission, 131 M Street, NE., Washington, DC 20507, (202) 663–4306.

SUPPLEMENTARY INFORMATION: Publication of the Performance Review Board (PRB) membership is required by 5 U.S.C. 4314(c)(4). The PRB reviews and evaluates the initial appraisal of a senior executive's performance by the supervisor, and makes recommendations to the Chair, EEOC, with respect to performance ratings, pay level adjustments and performance awards.

The following are the names and titles of executives appointed to serve as members of the SES PRE. Members will serve a 12-month term, which begins on October 14, 2011.

PRB Chair

Ms. Katharine M. Kores, Director, Memphis District Office, Equal Employment Opportunity Commission.

Members

Mr. Michael Baldonado, Director, San Francisco District Office, Equal Employment Opportunity Commission;

Ms. Delner Franklin-Thomas, Director, Birmingham District Office, Equal Employment Opportunity Commission;

Ms. Peggy R. Mastroianni, Legal Counsel, Equal Employment Opportunity Commission;

Mr. A. Jacy Thurmond, Associate Commissioner for the Office of Civil Rights and Equal Opportunities, Social Security Administration;

Mr. William Spencer, Clerk, Merit Systems Protection Board.

Alternate

Mr. Reuben Daniels, Jr., Director, Charlotte District Office, Equal Employment Opportunity Commission.

Dated: October 6, 2011.

By the direction of the Commission.

Jacqueline A. Berrien,

Chair.

[FR Doc. 2011–26452 Filed 10–12–11; 8:45 am]

BILLING CODE 6570–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

October 4, 2011.

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 12, 2011. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at (202) 395–5167 or via the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to the Federal Communications Commission via e-mail to *PRA@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: Leslie F. Smith, Office of Managing Director, (202) 418–0217. For additional information, contact Leslie F. Smith, (202) 418–0217, or via the Internet at *Leslie.Smith@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0812.

Title: Exemption from Payment of Regulatory Fees When Claiming Non-Profit Status.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Not-for-profit institutions, businesses, or other for-profit organizations; and State, local, or tribal governments.

Number of Respondents and Responses: 5,300 respondents; 5,830 responses.

Estimated Time per Response: 30 minutes (0.5 hours).

Frequency of Response: Recordkeeping; Annual, on occasion, and one-time reporting requirements.

Obligation To Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 159.

Total Annual Burden: 2,915 hours.

Total Annual Cost: $0.00.

Privacy Act Impact Assessment: No privacy impacts.

Nature and Extent of Confidentiality: Licensees or regulatees concerned about disclosure of sensitive information in any submission to the Commission may request confidential treatment pursuant to 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Federal Communications Commission (FCC), in accordance with the Communications Act of 1934, as amended, is required to assess and collect regulatory fees from its licensees and regulatees in order to recover its costs incurred in conducting enforcement, policy and rulemaking, international and user information services.

The purposes for the requirements are to facilitate: (1) The statutory provision that non-profit entities be exempt from payment of regulatory fees; and (2) the FCC's ability to audit regulatory fee payment compliance.

In order to develop a *Schedule of Regulatory Fees*, the FCC must, as accurately as possible, estimate the number of fee payment entities and distribute the costs. These estimates must be adjusted to account for any licensees or regulatees that are exempt from payment of regulatory fees. The FCC, therefore, requires all licensees and regulatees that claim exemption as non-profit entities to provide one-time only documentation sufficient to establish their non-profit status. Further, the FCC is requesting that it be similarly notified if for any reason that status changes. The documentation necessary to provide to the Commission will likely take the form of an Internal Revenue Service (IRS) Determination Letter, a state charter indicating non-profit status, proof of church affiliation indicating tax exempt status, etc.

The FCC is requiring licensees or regulatees to maintain and to make available, upon request, for inspection such records they would normally keep in the course of doing business. This will enable the FCC to conduct any audits deemed appropriate to determine whether fee payments were made correctly, and will help ensure compliance with the FCC fee exemption policies.

While there is no change in the burden hours for each respondent/reporting entity, the aggregate burdens hours have increased due to more entities having claimed non-profit status in the last three years.

Federal Communications Commission.

Marlene H. Dortch,

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

[FR Doc. 2011–26416 Filed 10–12–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501—3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before December 12, 2011. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at (202) 395–5167 or via Internet at *Nicholas_A._Fraser@omb.eop.gov* and to Leslie F. Smith, Office of Managing Director (OMD), Federal Communications Commission (FCC), via the Internet at *Leslie.Smith@fcc.gov*. To submit your PRA comments by e-mail send them to: *PRA@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: Leslie F. Smith, Office of Managing Director (OMD), Federal Communications Commission (FCC), (202) 418–0217, or via the Internet at *Leslie.Smith@fcc.gov*.

OMB Control Number: 3060–0812.

Title: Exemption from Payment of Regulatory Fees When Claiming Non-Profit Status.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Not-for-profit institutions; business or other for-profit organizations; and State, local, or tribal governments.

Number of Respondents and Responses: 5,300 respondents; 5,830 responses.

Estimated Time per Response: 30 minutes (0.5 hours).

Frequency of Response: Recordkeeping; annual, on occasion, and one time reporting requirements.

Obligation To Respond: Required to obtain or retain benefits. Statutory authority for this information collection (IC) is contained in 47 U.S.C. 159.

Total Annual Burden: 2,915 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: No impact.

Nature and Extent of Confidentiality: Licensees or regulates concerned about disclosure of sensitive information in any submissions to the Commission may request confidential treatment pursuant to 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Federal Communications Commission (FCC), in accordance with the Communications Act of 1934, as amended, is required to assess and collect regulatory fees from its licensees and regulatees in order to recover its costs incurred in conducting enforcement, policy and rulemaking, international and user information services.

The purposes for the requirements are to facilitate: (1) The statutory provision that non-profit entities be exempt from payment of regulatory fees; and (2) the FCC's ability to audit regulatory fee payment compliance.

In order to develop a *Schedule of Regulatory Fees,* the FCC must, as accurately as possible, estimate the number of fee payment entities and distribute the costs. These estimates must be adjusted to account for any licensees or regulatees that are exempt from payment of regulatory fees. The FCC, therefore, requires all licensees and regulatees that claim exemption as non-profit entities to provide one-time only documentation sufficient to establish their non-profit status. Further, the FCC is requesting that it be similarly notified if for any reason that status changes. The documentation necessary to provide to the Commission will likely take the form of an Internal Revenue Service (IRS) Determination Letter, a state charter indicating non-profit status, proof of church affiliation indicating tax exempt status, etc.

The FCC is requiring licensees or regulatees to maintain and to make available, upon request, for inspection such records they would normally keep in the course of doing business. This will enable the FCC to conduct any audits deemed appropriate to determine whether fee payments were made correctly, and will help ensure compliance with the FCC fee exemption policies.

While there is no change in the burden hours for each respondent/reporting entity, the aggregate burdens hours have increased due to more entities having claimed non-profit status in the last three years.

Federal Communications Commission.

Marlene H. Dortch,

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

[FR Doc. 2011–26417 Filed 10–12–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notice

AGENCY: Federal Election Commission.

DATE AND TIME: Tuesday, October 18, 2011 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

Items To Be Discussed

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shelley E. Garr,

Deputy Secretary of the Commission.

[FR Doc. 2011–26663 Filed 10–11–11; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*http://www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov*.

Agreement No.: 008005–010.

Title: New York Terminal Conference Agreement.

Parties: American Stevedoring Inc.; Port Newark Container Terminal LLC; Universal Maritime Service Corp.; New York Container Terminal; and Global Terminal and Container Services.

Filing Party: George J. Lair; New York Terminal Conference; P.O. Box 875; Chatham, NJ 07928.

Synopsis: The amendment substitutes Red Hook Container Terminal, LLC for American Stevedoring, Inc. as a party to the agreement. The parties requested expedited review.

Agreement No.: 011223–047.

Title: Transpacific Stabilization Agreement.

Parties: American President Lines, Ltd. and APL Co. PTE Ltd.; (operating as a single carrier); A.P. Moller-Maersk A/S trading as Maersk Line; China Shipping Container Lines (Hong Kong) Company Limited and China Shipping Container Lines Company Limited (operating as a single carrier); CMA CGM, S.A.; COSCO Container Lines Company Ltd; Evergreen Line Joint Service Agreement; Hanjin Shipping Co., Ltd.; Hapag-Lloyd AG; Hyundai Merchant Marine Co., Ltd.; Kawasaki Kisen Kaisha Ltd.; Mediterranean Shipping Company; Nippon Yusen Kaisha; Orient Overseas Container Line Limited; Yangming Marine Transport Corp.; and Zim Integrated Shipping Services, Ltd.

Filing Party: David F. Smith, Esq.; Cozen O'Connor; 6271 I Street, NW.; Suite 1100; Washington, DC 20006.

Synopsis: The amendment would modify the voting requirement for TSA actions from a unanimous vote to a three-fourths vote.

Agreement No.: 012080–001.

Title: HMM/Hanjin Reciprocal Space Charter Agreement.

Parties: Hyundai Merchant Marine Co., Ltd. and Hanjin Shipping Co., Ltd.

Filing Parties: Robert B. Yoshitomi, Esq.; Nixon Peabody LLP; 555 West 5th Street, 46th Floor; Los Angeles, CA 90013–1025 and David F. Smith, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment removes Korea from the geographic scope of them agreement and updates Hyundai's corporate address.

Agreement No.: 012118–001.

Title: CMA CGM/OOCL Victory Bridge Space Charter Agreement.

Parties: CMA CGM S.A. and Orient Overseas Container Line Limited.

Filing Party: Draughn Arbona, Esq.; Associate Counsel & Environmental Officer; CMA CGM (America) LLC; 5701 Lake Wright Drive; Norfolk, VA 23502.

Synopsis: The amendment increases the amount of space purchased by OOCL from CMA CGM.

Agreement No.: 012122–001.

Title: Grand Alliance/Zim/HMM Transpacific Vessel Sharing Agreement.

Parties: Hapag-Lloyd Aktiengesellschaft; Hyundai Merchant Marine Co., Ltd.; Nippon Yusen Kaisha; Orient Overseas Container Line Limited; and Zim Integrated Shipping Services Limited (ZIM).

Filing Party: Wayne Rohde, Esq.; Cozen O'Connor; 627 I Street, NW.; Suite 1100; Washington, DC 20006.

Synopsis: The Amendment expands the geographic scope of the Agreement to include Taiwan. The parties requested expedited review.

Agreement No.: 012137.

Title: Hapag-Lloyd/NYK–Hanjin Shipping Slot Exchange Agreement.

Parties: Hapag-Lloyd AG, Nippon Yusen Kaisha, and Hanjin Shipping Co. Ltd.

Filing Parties: Wayne R. Rohde, Esq.; Cozen O'Connor; 1627 I Street, NW.; Suite 1100; Washington, DC 20006–4007.

Synopsis: The Agreement authorizes the parties to slot charter space on their services in the trade between the U.S. Pacific Coast and Korea, China, Taiwan, Thailand, Vietnam, and Singapore.

Agreement No.: 012138.

Title: CSAV/CCNI Venezuela Space Charter Agreement.

Parties: Compana Sud Americana de Vapores S.A. and Compania Chilena de Navegacion Interoceanica S.A..

Filing Party: Walter H. Lion, Esq.; McLaughlin & Stern, LLP; 260 Madison Avenue; New York, NY 10016.

Synopsis: The agreement authorizes the parties to charter space on vessels in the trade between U.S. Gulf ports and ports in Venezuela.

Dated: October 7, 2011.

By Order of the Federal Maritime Commission.

Karen V. Gregory,

Secretary.

[FR Doc. 2011–26482 Filed 10–12–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act (PRA), pursuant to 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR part 1320 appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before December 12, 2011.

ADDRESSES: You may submit comments, identified by FR 2028A, FR 2028B, or FR 2028S, by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.
- *FAX:* 202/452–3819 or 202/452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and G Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

Additionally, commenters should send a copy of their comments to the OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235 725 17th Street, NW., Washington, DC 20503 or by fax to 202–395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: *http://www.federalreserve.gov/boarddocs/reportforms/review.cfm* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer —Cynthia Ayouch—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829) Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Request for Comment on Information Collection Proposal

The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Proposal To Approve Under OMB Delegated Authority the Extension for Three Years, With Revision, of the Following Report

Report title: Survey of Terms of Lending.

Agency form number: FR 2028A, FR 2028B, and FR 2028S.

OMB control number: 7100–0061.

Frequency: Quarterly.

Reporters: Commercial banks and U.S. branches and agencies of foreign banks (FR 2028A and FR 2028S only).

Estimated annual reporting hours: 7,438 hours.

Estimated average hours per response: FR 2028A, 3.65 hours; FR 2028B, 1.4 hours; and FR 2028S, 0.1 hours.

Number of respondents: FR 2028A, 398; FR 2028B, 250; and FR 2028S, 567.

General description of report: This information collection is authorized by section 11(a)(2) of the Federal Reserve Act (12 U.S.C. 248(a)(2)) and is voluntary. Individual responses

reported on the FR 2028A and FR 2028B are regarded as confidential under the Freedom of Information Act (5 U.S.C. 552(b)(4)).

Abstract: The Survey of Terms of Lending collects unique information concerning price and certain nonprice terms of loans made to businesses and farmers during the first full business week of the mid-month of each quarter (February, May, August, and November). The survey comprises three reporting forms: the FR 2028A, Survey of Terms of Business Lending; the FR 2028B, Survey of Terms of Bank Lending to Farmers; and the FR 2028S, Prime Rate Supplement to the Survey of Terms of Lending. The FR 2028A and FR 2028B collect detailed data on individual loans made during the survey week, and the FR 2028S collects the prime interest rate for each day of the survey from both FR 2028A and FR 2028B respondents. From these sample STL data, estimates of the terms of business loans and farm loans extended during the reporting week are constructed. The aggregate estimates for business loans are published in the quarterly E.2 release, *Survey of Terms of Business Lending*, and aggregate estimates for farm loans are published in the E.15 release, *Agricultural Finance Databook*.

Current Actions: The Federal Reserve proposes to revise the FR 2028A by adding four columns: a data item to denote if the loan was guaranteed by the Small Business Administration (SBA), a data item to indicate if the loan was made under either participation or syndication, the RSSD ID of the branch that originated each loan, and the loan origination fee in dollars. The Federal Reserve further proposes to raise the minimum loan size reported from $7,500 to $10,000. The minimum loan size on the FR 2028B will remain $3,000, as the mean and median loan sizes reported on that survey are significantly smaller than those reported on the business loan survey. The Federal Reserve proposes to revise the FR 2028B by also adding a column to collect the RSSD ID of the branch that originated each loan. The proposed revisions would be implemented effective for the February 2012 survey week. No changes are proposed to the FR 2028S.

Board of Governors of the Federal Reserve System, October 7, 2011.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2011–26459 Filed 10–12–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions 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 offices 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 26, 2011.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Marilyn Senty Ivers,* Great Falls, Montana; to retain voting shares of Northern Financial Corporation, and thereby indirectly retain voting shares of Independence State Bank, both in Independence, Wisconsin.

B. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Jeff A. Berkley Trust II; Karen M. Deckert Trust II, Karla J. Spurgeon Trust II; Calvin J. Berkley Trust II; Marika Spurgeon GP Trust; Brenna Spurgeon GP Trust; Patrick Spurgeon GP Trust; Rebekah Berkley GP Trust; Rachel Berkley GP Trust; Megan Berkley GP Trust; and Collin Berkley GP Trust,* all of Tescott, Kansas, to become members of the Berkley Family Group acting in-concert, who control New Millennium Bankshares, Inc., parent of Alliance Bank, both in Topeka, Kansas.

In connection with this application, Calvin Berkley and Karen Deckert, both of Tescott, Kansas, and Karla Spurgeon, Lawrence, Kansas, all co-trustees of one or more of the above trusts, have applied to become members of the Berkley Family Group.

In addition, Calvin Berkley, Karen Deckert, and Karla Spurgeon, individually as members of the Berkley Family Group will retain voting shares of New Millennium Bankshares, Inc, and thereby indirectly retain voting shares of Alliance Bank, both in Topeka, Kansas.

C. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. *Steven Donald Hovde,* Barrington, Illinois; to acquire voting shares of Coastal Financial Corporation, and thereby indirectly acquire voting shares of Coastal Community Bank, both in Everett, Washington.

Board of Governors of the Federal Reserve System, October 6, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–26434 Filed 10–12–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions 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 offices 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 27, 2011.

A. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. *Montlake Capital II, L.P, a limited partnership and Montlake Capital II–B, L.P., a limited partnership,* both in Seattle, Washington, to acquire voting shares of Coastal Financial Corporation, and thereby indirectly acquire voting shares of Coastal Community Bank, both in Everett, Washington.

Board of Governors of the Federal Reserve System, October 7, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–26456 Filed 10–12–11; 8:45 am]

BILLING CODE 6210–01–P

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 application 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.

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 November 4, 2011.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. *First Carolina Financial Services, Inc.*, Durham, North Carolina; to become a bank holding company by acquiring 95.26 percent of the voting securities of First Carolina State Bank, Rocky Mount, North Carolina, and 95.65 percent of the voting securities of Pisgah Community Bank, Asheville, North Carolina.

Board of Governors of the Federal Reserve System, October 6, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–26433 Filed 10–12–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 2011–25986) published on pages 62408 and 62409 of the issue for Friday, October 7, 2011.

Under the Federal Reserve Bank of St. Louis heading, the entry for MutualFirst Financial, Inc., Muncie, Indiana, is revised to read as follows:

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *MutualFirst Financial, Inc.*, Muncie, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of MutualBank, Muncie, Indiana.

Comments on this application must be received by November 4, 2011.

Board of Governors of the Federal Reserve System, October 7, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–26457 Filed 10–12–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) (HOLA), Regulation LL (12 CFR part 238), and Regulation MM (12 CFR part 239), and all other applicable statutes and regulations to become a savings and loan holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a savings association and nonbanking companies owned by the savings and loan 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 application 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 HOLA (12 U.S.C. 1467a(e)). 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 10(c)(4)(B) of the HOLA (12 U.S.C. 1467a(c)(4)(B)). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

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 November 7, 2011.

A. Federal Reserve Bank of Cleveland (Nadine Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. *Winding Creek Holdings, LLC*, Toledo, Ohio; to become a savings and loan holding company by acquiring 51 percent of the voting shares of Bank of Maumee, Maumee, Ohio.

Board of Governors of the Federal Reserve System, October 7, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–26458 Filed 10–12–11; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Research Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has taken final action in the following case:

Nicola Solomon, Ph.D., University of Michigan Medical School: Based on an investigation conducted by the University of Michigan Medical School (UMMS) and a preliminary analysis conducted by ORI, ORI found that Dr. Nicola Solomon, former postdoctoral scholar, Department of Human Genetics, UMMS, engaged in research misconduct in research supported by the National Institute of Child Health and Human Development (NICHD), National Institutes of Health (NIH), grants R37 HD030428 and R01 HD034283.

Specifically, the Respondent did not perform DNA sequencing on 202 cDNA clones of homeobox genes to confirm their identity and integrity. Through multiple revision of the manuscript, the Respondent did not discuss this with the corresponding author or question and correct the corresponding author's addition of text indicating that the clones had been fully sequenced and were full length or longer (as indicated in Table 3) when compared to NCBI Mus musculus Unigene. This text supported the use of the Cap-Trapper

technique to produce full length clones for the discovery of new genes without polymerase chain reaction (PCR).

Both the Respondent and the U.S. Public Health Service (PHS) are desirous of concluding this matter without further expenditure of time and other resources and have entered into a Voluntary Settlement Agreement to resolve this matter. This settlement is not an admission of liability on the part of the Respondent.

Respondent and ORI agreed to settle this matter as follows:

(1) Respondent agreed that for a period of two (2) years beginning on September 16, 2011, prior to the submission of an application for PHS support for a research project on which her participation is proposed in a research capacity, and prior to her participation in this capacity on PHS-supported research, Respondent shall ensure that a plan for supervising her duties is submitted to ORI for approval; the supervision must be designed to ensure the scientific integrity of Respondent's research contribution; Respondent agreed that she shall not participate as a researcher in any PHS-supported research until such a supervision plan is submitted to and approved by ORI; Respondent agreed to maintain responsibility for compliance with the agreed upon supervision plan; and

(2) Respondent agreed to exclude herself from serving in any advisory capacity to PHS including, but not limited to, service on any PHS advisory committee, board, and/or peer review committee, or as a consultant, for a period of two (2) years, beginning on September 16, 2011.

FOR FURTHER INFORMATION CONTACT: Director, Division of Investigative Oversight, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (240) 453–8800.

John Dahlberg,

Director, Division of Investigative Oversight, Office of Research Integrity.

[FR Doc. 2011–26453 Filed 10–12–11; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the National Biodefense Science Board

AGENCY: Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the U.S. Department of Health and Human Services is hereby giving notice that the National Biodefense Science Board (NBSB) will be holding a public meeting via teleconference. The meeting is open to the public.

DATES: The NBSB will hold a public meeting on October 28, 2011 from 3 p.m. to 4 p.m. EST. The agenda is subject to change as priorities dictate.

ADDRESSES: The meeting will occur by teleconference. To attend, call 1–866–395–4129, pass-code "ASPR." Please call 15 minutes prior to the beginning of the conference call to facilitate attendance. Individuals who wish to participate should send an email to *NBSB@HHS.GOV* with "NBSB Registration" in the subject line.

FOR FURTHER INFORMATION CONTACT: E-mail: *NBSB@HHS.GOV*.

SUPPLEMENTARY INFORMATION: Pursuant to section 319M of the Public Health Service Act (42 U.S.C. 247d–7f) and section 222 of the Public Health Service Act (42 U.S.C. 217a), the Department of Health and Human Services established the National Biodefense Science Board. The Board shall provide expert advice and guidance to the Secretary on scientific, technical, and other matters of special interest to the Department of Health and Human Services regarding current and future chemical, biological, nuclear, and radiological agents, whether naturally occurring, accidental, or deliberate. The Board may also provide advice and guidance to the Secretary and/or the Assistant Secretary for Preparedness and Response on other matters related to public health emergency preparedness and response.

Background: The majority of this public meeting teleconference will be dedicated to a discussion of the report and recommendations from the NBSB's Anthrax Vaccine Working Group. Subsequent agenda topics will be added as priorities dictate. Any additional agenda topics will be available on the Board's October meeting Web page prior to the public meeting.

Availability of Materials: The meeting agenda and materials will be posted prior to the meeting on the October meeting Web page at *http://www.phe.gov/preparedness/legal/boards/nbsb/pages/default.aspx*.

Procedures for Providing Public Input: Members of the public are invited to attend by teleconference via a toll-free call-in phone number. The teleconference will be operator assisted to allow the public the opportunity to provide comments to the Board. Public participation will be limited to time and space available. Public comments will be limited to no more than 3 minutes per speaker. To be placed on the public comment list, notify the operator when you join the teleconference.

Public comments received by close of business one week prior to each teleconference will be distributed to the NBSB in advance. Submit comments via email to *NBSB@HHS.GOV*, with "NBSB Public Comment" as the subject line.

Dated: October 5, 2011.

Nicole Lurie,

Assistant Secretary for Preparedness and Response.

[FR Doc. 2011–26389 Filed 10–12–11; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Healthcare Infection Control Practices Advisory Committee, (HICPAC)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting for the aforementioned committee:

Times and Dates:

9 a.m.–5 p.m., November 3, 2011.

9 a.m.–12 p.m., November 4, 2011.

Place: Embassy Suites-Washington, DC Convention Center, Capital CD Room, 900 10th Street, NW., Washington, DC 2000.

Status: Open to the public, limited only by the space available. Please register for the meeting at *http://www.cdc.gov/hicpac*.

Purpose: The Committee is charged with providing advice and guidance to the Secretary, the Assistant Secretary for Health, the Director, CDC, the Director, National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), and the Director, Division of Healthcare Quality Promotion regarding (1) The practice of healthcare infection control; (2) strategies for surveillance, prevention, and control of infections (*e.g.*, nosocomial infections), antimicrobial resistance, and related events in settings where healthcare is provided; and (3) periodic updating of guidelines and other policy statements regarding prevention of healthcare-associated infections and healthcare-related conditions.

Matters To Be Discussed: The agenda will include updates on CDC's activities for healthcare associated infections, draft guideline for prevention of infections among patients in neonatal intensive care units (NICU), draft guideline for infection control in healthcare personnel, draft guideline for the prevention of surgical site infections, update from the HICPAC surveillance working group, and guidance for control of Carbapenem-resistant Enterobacteriaceae.

Agenda items are subject to change as priorities dictate.

For Further Information Contact: Heidi Williams, HICPAC, Division of Healthcare

Quality Promotion, NCEZID, CDC, 1600 Clifton Road, NE., Mailstop A–07, Atlanta, Georgia 30333, *E-mail: hicpac@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: October 5, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–26477 Filed 10–12–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry (BSC, NCEH/ATSDR)

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

8:30 a.m.–4:30 p.m., November 3, 2011.

8:30 a.m.–12:30 p.m., November 4, 2011.

Place: CDC, 4770 Buford Highway, Atlanta, Georgia 30341.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 75 people.

Purpose: The Secretary, Department of Health and Human Services (HHS) and by delegation, the Director, CDC and Administrator, NCEH/ATSDR, are authorized under Section 301 (42 U.S.C. 241) and Section 311 (42 U.S.C. 243) of the Public Health Service Act, as amended, to: (1) Conduct, encourage, cooperate with, and assist other appropriate public authorities, scientific institutions, and scientists in the conduct of research, investigations, experiments, demonstrations, and studies relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases and other impairments; (2) assist states and their political subdivisions in the prevention of infectious diseases and other preventable conditions and in the promotion of health and well being; and (3) train state and local personnel in health work. The BSC, NCEH/ATSDR provides advice and guidance to the Secretary, HHS; the Director, CDC and Administrator, ATSDR; and the Director, NCEH/ATSDR, regarding program goals, objectives, strategies, and priorities in fulfillment of the agency's mission to protect and promote people's health. The board provides advice and guidance that will assist NCEH/ATSDR in ensuring scientific quality, timeliness, utility, and dissemination of results. The board also provides guidance to help NCEH/ATSDR work more efficiently and effectively with its various constituents and to fulfill its mission in protecting America's health.

Matters To Be Discussed: The agenda items for the BSC Meeting on November 3–4, 2011, will include NCEH/ATSDR Office of the Director updates: ATSDR and NCEH Reorganization; update on Asthma, Lead and Healthy Homes Program; presentation on public health prioritization at ATSDR; update on the Nutritional Biomarker Report: transfat analysis; update on ATSDR Science Symposium; update on Camp LeJeune; update on Environmental Health Tracking; presentation on hydraulic fracking; global health updates: indoor air pollution and health and lead in Nigeria.

Agenda items are subject to change as priorities dictate.

SUPPLEMENTARY INFORMATION: The public comment period is scheduled on Thursday, November 3, 2011 from 4:15 p.m. until 4:25 p.m., and Friday, November 4, 2011, from 12:15 p.m. until 12:25 p.m.

Contact Person for More Information: Sandra Malcom, Committee Management Specialist, NCEH/ATSDR, 4770 Buford Highway, Mail Stop F–61, Chamblee, Georgia 30345; Telephone: (770) 488–0575; Fax: (770) 488–3377; E-mail: *smalcom@cdc.gov.* The deadline for notification of attendance is October 27, 2011.

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: October 6, 2011.

Catherine Ramadei,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 2011–26501 Filed 10–12–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

President's Committee for People With Intellectual Disabilities Committee Meeting via Conference Call

AGENCY: President's Committee for People with Intellectual Disabilities (PCPID), HHS.

ACTION: Notice of committee meeting via conference call.

DATES: Friday, October 28, 2011, from 1 p.m. to 2:30 p.m. EST. This meeting, to be held via audio conference call, is open to the public.

Details for accessing the full Committee Conference Call, for the public, are cited below:

Toll Free Dial-In Number: 888–282–9630;

Pass Code: 9329684.

Individuals who will need accommodations in order to participate in the PCPID Meeting via audio conferencing (assistive listening devices, materials in alternative format such as large print or Braille) should notify Genevieve Swift, PCPID Executive Administrative Assistant, at *Edith.Swift@acf.hhs.gov,* or by telephone at 202–619–0634, no later than Friday, October 21, 2011. PCPID will attempt to meet requests for accommodations made after that date, but cannot guarantee ability to grant requests received after this deadline.

Agenda: Committee Members will review and approve the 2011 PCPID Report (Letter) to the President.

Additional Information: For further information, please contact Laverdia Taylor Roach, Senior Advisor, President's Committee for People with Intellectual Disabilities, The Aerospace Center, Second Floor West, 370 L'Enfant Promenade, SW., Washington, DC 20447. Telephone: 202–619–0634. Fax: 202–205–9519. E-mail: *LRoach@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: PCPID acts in an advisory capacity to the President and the Secretary of Health and Human Services, through the Administration on Developmental Disabilities, on a broad range of topics relating to programs, services, and supports for persons with intellectual disabilities. The PCPID Executive Order stipulates that the Committee shall: (1) Provide such advice concerning intellectual disabilities as the President or the Secretary of Health and Human Services may request; and (2) provide advice to the President concerning the

following for people with intellectual disabilities: (A) Expansion of educational opportunities; (B) promotion of homeownership; (C) assurance of workplace integration; (D) improvement of transportation options; (E) expansion of full access to community living; and (F) increasing access to assistive and universally designed technologies.

Dated: October 6, 2011.

Jamie Kendall,

Deputy Commissioner, Administration on Developmental Disabilities.

[FR Doc. 2011–26522 Filed 10–12–11; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Bureau of Health Professions All-Advisory Committee Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: Bureau of Health Professions All-Advisory Committee, Meeting (AACM).

Date and Time: November 9, 2011, 8 a.m.–5 p.m.

Place: Georgetown University Hotel and Conference Center, 3800 Reservoir Road, NW., Washington, DC 20057, *Telephone:* 202–687–3200.

Status: The meeting will be open to the public.

Purpose: The purpose of the meeting is to provide a venue for the Bureau of Health Professions' (BHPr) four advisory committees [the Council on Graduate Medical Education (COGME), the Advisory Committee on Training in Primary Care Medicine and Dentistry (ACTPCMD), the Advisory Committee on Interdisciplinary, Community-Based Linkages (ACICBL), and the National Advisory Council on Nurse Education and Practice (NACNEP)] to develop a common knowledge of performance measurement and longitudinal evaluation in their new role of partnering with BHPr to improve program effectiveness.

Agenda: The AACM agenda will include updates on Bureau priorities, review of the new responsibilities for the advisory committees in response to the Affordable Care Act, newly revised BHPr performance measures and longitudinal evaluation plans. Agenda items are subject to change as priorities dictate.

For Further Information Contact: Anyone interested in obtaining a roster of members, minutes of the meeting, or other relevant information can contact the Bureau of Health Professions, Office of the Associate Administrator, 5600 Fishers Lane, Room 9–05, Rockville, Maryland 20857; telephone (301) 443–5794. Information can also be found at the following Web site: *http://www.hrsa.gov/advisorycommittees/bhpraac/*.

Dated: October 6, 2011.

Reva Harris,

Acting Director, Division of Policy and Information Coordination.

[FR Doc. 2011–26451 Filed 10–12–11; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group, Biobehavioral and Behavioral Sciences Subcommittee.

Date: November 4, 2011.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Dupont Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036.

Contact Person: Marita R. Hopmann, PhD, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–435–6911, *hopmannm@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 6, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–26491 Filed 10–12–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Maternofetal Signaling and Lifelong Consequences.

Date: November 3, 2011.

Time: 1:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Peter Zelazowski, PhD, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–435–6902, *peter.zelazowski@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 6, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–26492 Filed 10–12–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; 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 Institute of Mental Health Special Emphasis Panel, National Cooperative Drug Discovery and Development Group.

Date: November 4, 2011.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Vinod Charles, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9606, Bethesda, MD 20892–9606, 301–443–1606, *charlesvi@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, R34/T32 HIV and AIDS applications.

Date: November 7, 2011.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Megan Libbey, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6148, MSC 9609, Rockville, MD 20852–9609, 301–402–6807, *libbeym@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, HIV: Treatment Engagement and Retention.

Date: November 18, 2011.

Time: 8:30 a.m. to 5 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: David I. Sommers, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Blvd., Room 6154, MSC 9606, Bethesda, MD 20892–9606, 301–443–7861, *dsommers@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Intergrating Multi-Dimensional Data to Explore Mechanisms Underlying Mental Disorders.

Date: November 21, 2011.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Vinod Charles, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9606, Bethesda, MD 20892–9606, 301–443–1606, *charlesvi@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: October 6, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–26494 Filed 10–12–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review Notice of Closed 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; Neuropsychiatric Disorders and Neuropathies Special Emphasis Panel.

Date: October 26, 2011.

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: Jay Joshi, PHD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5196, MSC 7846, Bethesda, MD 20892, (301) 408–9135, *joshij@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Radiation Therapy and Biology.

Date: November 1–2, 2011.

Time: 9 a.m. to 11 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Bo Hong, PHD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 7804, Bethesda, MD 20892, 301–435–5879, *hongb@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group; Behavioral and Social Consequences of HIV/AIDS Study Section.

Date: November 8–9, 2011.

Time: 8 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Wardman Park Washington DC Hotel, 2660 Woodley Road, NW., Washington, DC 20008.

Contact Person: Mark P Rubert, PHD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–806–6596, *rubertm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Diabetes and Nutrition.

Date: November 8, 2011.

Time: 12 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Krish Krishnan, PHD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, (301) 435–1041, *krishnak@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: October 6, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–26495 Filed 10–12–11; 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 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 Conference Grant Review.

Date: November 1–2, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Dana Phares, PhD, Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7179, Bethesda, MD 20892–7924, 301–435–0310, *pharesda@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Blood Pressure Regulations PPG.

Date: November 1, 2011.

Time: 11 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Keary A. Cope, PhD, Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7190, Bethesda, MD 20892–7924, 301–435–2222, *copeka@mail.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Anchoring Metabolic Changes in Phenotype.

Date: November 3, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn Washington DC/Bethesda, 7301 Waverly Street, Bethesda, MD 20814.

Contact Person: Susan Wohler Sunnarborg, PhD, Scientific Review Officer, Office of Scientific Review/DERA, National, Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7185, Bethesda, MD 20892, *sunnarborgsw@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: October 6, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–26496 Filed 10–12–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Epidemiology and Genetics of Cancer.

Date: October 27, 2011.

Time: 1 p.m. to 2:30 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: Fungai Chanetsa, MPH., PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3135, MSC 7770, Bethesda, MD 20892, 301–408–9436, *fungai.chanetsa@nih.hhs.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: October 6, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–26493 Filed 10–12–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2011–0955]

Information Collection Requests to Office of Management and Budget

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit Information Collection Requests (ICRs) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval of revisions to the following collections of information: 1625–0034, Ships' Stores Certification for Hazardous Materials Aboard Ships; and 1625–0043, Ports and Waterways Safety—Title 33 CFR Subchapter P. Our ICRs describe the information we seek to collect from the public. Before submitting these ICRs to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before December 12, 2011.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2011–0955] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT). To avoid duplicate submissions, please use only one of the following means:

(1) *Online: http://www.regulations.gov.*

(2) *Mail:* DMF (M–30), DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE.; Washington, DC 20590–0001.

(3) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251. To ensure your comments are received in a timely manner, mark the fax, to attention Desk Officer for the Coast Guard.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at *http://www.regulations.gov.*

Copies of the ICRs are available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–611), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2100 2nd St., SW., Stop 7101, Washington, DC 20593–7101.

FOR FURTHER INFORMATION CONTACT: Ms. Kenlinishia Tyler, Office of Information Management, telephone 202–475–3652, or fax 202–475–3929, for questions on these documents. Contact Ms. Renee V.

Wright, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collections. There is one ICR for each Collection.

The Coast Guard invites comments on whether these ICRs should be granted based on the Collections being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collections; (2) the accuracy of the estimated burden of the Collections; (3) ways to enhance the quality, utility, and clarity of information subject to the Collections; and (4) ways to minimize the burden of the Collections on respondents, including the use of automated collection techniques or other forms of information technology. In response to your comments, we may revise these ICRs or decide not to seek approval for the Collections. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2011–0955], and must be received by December 12, 2011. We will post all comments received, without change, to *http://www.regulations.gov*. They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the "Privacy Act" paragraph below.

Submitting Comments

If you submit a comment, please include the docket number [USCG–2011–0955], indicate the specific section of the document to which each comment applies, providing a reason for each comment. You may submit your comments and material online (*via http://www.regulations.gov*), by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov*, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the DMF. We recommend you include your name, mailing address, an e-mail address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission.

You may submit your comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**; but please submit them by only one means. To submit your comment online, go to *http://www.regulations.gov*, and type "USCG–2011–0955" in the "Keyword" box. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½; by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and will address them accordingly.

Viewing comments and documents: To view comments, as well as documents mentioned in this Notice as being available in the docket, go to *http://www.regulations.gov*, click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2011–0955" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the DMF in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can search the electronic form of comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act statement regarding Coast Guard public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Information Collection Requests

1. *Title:* Ships' Stores Certification for Hazardous Materials Aboard Ships.

OMB Control Number: 1625–0034.

Summary: The information is used by the Coast Guard to ensure that personnel aboard ships are made aware of the proper usage and stowage instructions for certain hazardous materials. Provisions are made for waivers of products in special Department of Transportation (DOT) hazard classes.

Need: Section 3306 of 46 U.S.C. authorizes the Coast Guard to prescribe regulations for the transportation, stowage, and use of ships' stores and supplies of a dangerous nature. Part 147 of 46 CFR prescribes the regulations for hazardous ships' stores.

Forms: None.

Respondents: Owners and operators of ships, and suppliers and manufacturers of hazardous materials used on ships.

Frequency: On occasion.

Burden Estimate: The estimated burden has decreased from 12 hours to 8 hours a year.

2. *Title:* Ports and Waterways Safety—Title 33 CFR Subchapter P.

OMB Control Number: 1625–0043.

Summary: This collection of information allows the master, owner, or agent of a vessel affected by these rules to request a deviation from the requirements governing navigation safety equipment to the extent that there is no reduction in safety.

Need: Provisions in 33 CFR chapter I, subchapter P, allow any person directly affected by the rules in that subchapter to request a deviation from any of the requirements as long as it does not compromise safety. This collection enables the Coast Guard to evaluate the information the respondent supplies, to determine whether it justifies the request for a deviation.

Forms: None.

Respondents: Master, owner, or agent of a vessel.

Frequency: On occasion.

Burden Estimate: The estimated burden has decreased from 2,865 hours to 2,447 hours a year.

Dated: October 5, 2011.

R.E. Day,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 2011–26412 Filed 10–12–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2011–0022]

Preliminary Damage Assessment for Individual Assistance Operations Manual (9327.2–PR)

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of availability; request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) is accepting comments on the draft Preliminary Damage Assessment for Individual Assistance Operations Manual (9327.2–PR).

DATES: Comments must be received by November 14, 2011.

ADDRESSES: Comments must be identified by Docket ID FEMA–2011–0022 and may be submitted by one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments. Please note that this proposed manual is not a rulemaking and the Federal Rulemaking Portal is being utilized only as a mechanism for receiving comments.

Mail: Legislation, Regulations, & Policy Division, Office of Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street, SW., Washington, DC 20472–3100.

FOR FURTHER INFORMATION CONTACT: Michael M. Grimm, Individual Assistance Director, Individual Assistance Division, FEMA, 202–212–1000, for additional information. You can also access a copy of the draft Preliminary Damage Assessment for Individual Assistance Operations Manual (9327.2–PR) on *http://www.fema.gov;* keyword, PDA Manual.

SUPPLEMENTARY INFORMATION

I. Public Participation

Instructions: All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice, which can be viewed by clicking on the "Privacy Notice" link in the footer of *www.regulations.gov.*

You may submit your comments and material by the methods specified in the **ADDRESSES** section above. Please submit your comments and any supporting material by only one means to avoid the receipt and review of duplicate submissions.

Docket: The proposed manual is available in Docket ID FEMA–2011–0022. For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov* and search for the Docket ID. Submitted comments may also be inspected at FEMA, Office of Chief Counsel, Room 835, 500 C Street, SW., Washington, DC 20472.

II. Background

The Preliminary Damage Assessment for Individual Assistance Operations Manual (PDA Manual) was developed to create uniform procedures for performing Individual Assistance (IA) Preliminary Damage Assessments (PDAs) nationwide in response to an impacted State's request. The primary purpose for conducting IA PDAs is to identify the impact, type, and extent of disaster damages and to determine the impact on individuals and communities while identifying the resources needed for the community to recover.

The PDA is an important first step in the disaster declaration process. The PDA information will be used by the State to determine if the response and recovery actions will require Federal support. If the Governor determines that the State does not have adequate resources to respond and recover from the disaster, and supplemental Federal assistance is required, the Governor may request a Presidential emergency or major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5170 and 5191). The PDA information, along with the Governor's request is included with the *Regional Summary, Analysis, and Recommendations (RSAR)* and is forwarded to FEMA for review. FEMA then prepares a recommendation to the President based on the PDA information and RSAR. Establishing a single set of PDA procedures ensures that regardless of the location, type of disaster, or FEMA Regional Office involved, the assessment of damages will be consistent, thorough, and well coordinated.

The draft PDA Manual would supersede FEMA Manual 9327.1 PR, *Preliminary Damage Assessment for Individual Assistance Operations Manual,* dated April 2005. FEMA convened an IA PDA working group to review and update the 2005 manual. The draft PDA Manual, therefore, was prepared and reviewed by FEMA regional staff, in collaboration with State and local government representatives, including Tribes, with extensive field experience in performing PDAs. It incorporates procedures developed and used by individual FEMA regional offices in the course of conducting PDAs throughout the United States in a variety of disasters over several years. It reflects FEMA's extensive experience working with State and local governments. The draft PDA Manual is intended to set the standard for defining and recording levels of damage; as well as to establish uniformity in the composition of teams and the means by which data is collected.

The proposed manual does not have the force or effect of law.

FEMA seeks comment on the draft PDA Manual, which is available online at *http://www.regulations.gov* in Docket ID FEMA–2011–0022. Based on the comments received, FEMA may make appropriate revisions to the draft manual. Although FEMA will consider any comments received in the drafting of the final manual, FEMA will not provide a response to comments document. When or if FEMA issues a final manual, FEMA will publish a notice of availability in the **Federal Register** and make the final manual available at *http://www.regulations.gov.* The final manual will not have the force or effect of law.

Authority: The draft PDA Manual is consistent with and supports the current plans and procedures of the National Response Framework for implementation of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, 42 U.S.C. 5121 *et seq.* and its implementing regulations in Title 44, Chapter I of the Code of Federal Regulations.

Dated: October 6, 2011.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

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DEPARTMENT OF HOMELAND SECURITY

Citizenship and Immigration Services

[CIS No. 2513–11; DHS Docket No. USCIS–2011–0012]

RIN 1615–ZB08

Designation of Republic of South Sudan for Temporary Protected Status

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This Notice announces that the Secretary of Homeland Security (Secretary) has designated the Republic of South Sudan (South Sudan) for Temporary Protected Status (TPS) for a period of 18 months, effective November 3, 2011 through May 2, 2013. Under section 244(b)(1) of the Immigration and Nationality Act (INA), the Secretary is authorized to grant TPS to eligible nationals of designated foreign states or parts of such states (or to eligible aliens having no nationality who last habitually resided in such states) upon finding that such states are experiencing ongoing armed conflict, environmental disaster, or other extraordinary and temporary conditions that prevent nationals from returning safely.

This designation allows eligible South Sudan nationals (and aliens having no nationality who last habitually resided in the region that is now South Sudan) who have continuously resided in the United States since October 7, 2004 to obtain TPS. In addition to demonstrating continuous residence in the United States since October 7, 2004, applicants for TPS under this designation must demonstrate that they have been continuously physically present in the United States since November 3, 2011, the effective date of the designation of South Sudan. The Secretary has established November 3, 2011, as the effective date so that the 18-month designation of South Sudan will coincide with the 18-month extension period of TPS for Sudan, which is also being announced today. Although November 3, 2011, is a future date, applicants may begin applying for TPS immediately.

This designation is unique because on July 9, 2011, South Sudan became a new nation and independent from the Republic of Sudan, which has been designated for TPS since 1997. Some individuals who are TPS beneficiaries under the current designation of Sudan may now be nationals of South Sudan, calling into question their continued eligibility for TPS under the Sudan designation. These individuals may, however, now qualify for TPS under the South Sudan designation. This Notice sets forth regular procedures and special procedures necessary for nationals of South Sudan (or aliens having no nationality who last habitually resided in the region that is now South Sudan) to register and to apply for TPS and Employment Authorization Documents (EADs) with U.S. Citizenship and Immigration Services (USCIS).

Given the timeframes involved with processing TPS applications, the Department of Homeland Security (DHS) recognizes that individuals who have EADs under Sudan TPS that expire November 2, 2011 may not receive new EADs under South Sudan TPS until after their current EADs expire. Accordingly, the validity of EADs issued under the TPS designation of Sudan has been automatically extended for 6 months, through May 2, 2012. This automatic extension includes individuals who are now applying for TPS under the designation of South Sudan but were granted TPS and were issued an EAD under the Sudan designation. This Notice explains how TPS beneficiaries and their employers may determine which EADs are automatically extended and how the extension affects employment eligibility verification (Form I–9 and E–Verify) processes. This Notice also describes examples of acceptable evidence of South Sudanese nationality required for TPS registration under the South Sudan designation.

DATES: This designation of South Sudan for TPS is effective on November 3, 2011 and will remain in effect through May 2, 2013. The 180-day registration period for eligible individuals to submit initial TPS applications begins October 13, 2011, and will remain in effect until April 10, 2012.

FOR FURTHER INFORMATION CONTACT:

- For further information on TPS, including guidance on the application process and additional information on eligibility, please visit the TPS Web page at *http://www.uscis.gov/tps*. You can find specific information about this designation and about TPS for South Sudan by selecting "TPS Designated Country--Republic of South Sudan" from the menu on the left of the TPS Web page. From the South Sudan page, you can select the "South Sudan TPS Questions & Answers" section from the menu on the right for further information.
- You can also contact the TPS Operations Program Manager by mail at the Status and Family Branch, Service Center Operations Directorate, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., Washington, DC 20529–2060 or by phone at (202) 272–1533 (this is not a toll-free number). **Note:** The phone number provided here is solely for questions regarding this TPS notice. It is not for individual case status inquiries.
- Applicants seeking information about the status of their individual cases can check Case Status Online available at the USCIS Web site at *http://www.uscis.gov*, or call the USCIS National Customer Service Center at 1–800–375–5283 (TTY 1–800–767–1833).
- Further information will also be available at local USCIS offices upon publication of this Notice.

SUPPLEMENTARY INFORMATION:

Abbreviations and Terms Used in This Document

ASC—USCIS Application Support Center.
CPA—Comprehensive Peace Agreement.
DHS—Department of Homeland Security.
DOS—Department of State.
EAD—Employment Authorization Document.
Government—U.S. Government.
GSS—Government of South Sudan.
IDP—Internally Displaced Person.
INA—Immigration and Nationality Act.
LRA—Lord's Resistance Army.
OCHA—United Nations Office for the Coordination of Humanitarian Affairs.
OSC—U.S. Department of Justice, Office of Special Counsel for Immigration-Related Unfair Employment Practices.
SAF—Sudan Armed Forces.
Secretary—Secretary of Homeland Security.
South Sudan—Republic of South Sudan.
SPLA—Sudan People's Liberation Army.
SPLM/A—Sudan People's Liberation Movement/Army.
TPS—Temporary Protected Status.
UN—United Nations.
UNHCR—Office of the United Nations High Commissioner for Refugees.
UNMISS—United Nations Mission in the Republic of South Sudan.
USAID—U.S. Agency for International Development.
USCIS—U.S. Citizenship and Immigration Services.

What is Temporary Protected Status (TPS)?

- TPS is an immigration status granted to eligible nationals (or to persons without nationality who last habitually resided in the designated country) of a country designated for TPS under the Immigration and Nationality Act (Act).
- During the TPS designation period, TPS beneficiaries are eligible to remain in the United States and may obtain employment authorization, so long as they continue to meet the requirements of TPS.

- The granting of TPS does not lead to permanent resident status.
- When the Secretary of Homeland Security (Secretary) terminates a country's TPS designation, beneficiaries return to the same immigration status they maintained before TPS (unless that status has since expired or been terminated) or to any other lawfully obtained immigration status that they received while registered for TPS.

What authority does the Secretary of Homeland Security have to designate South Sudan for TPS?

Section 244(b)(1) of the INA, 8 U.S.C. 1254a(b)(1), authorizes the Secretary, after consultation with appropriate Government agencies, to designate a foreign state (or part thereof) for TPS.[1] The Secretary can designate a foreign state for TPS based on one of three circumstances. One circumstance is if "there is an ongoing armed conflict within the state and, due to such conflict, requiring the return of aliens who are nationals of that state to that state (or to the part of the state) would pose a serious threat to their personal safety." INA sec. 244(b)(1)(A), 8 U.S.C. 1254a(b)(1)(A). The Secretary can also designate a foreign state for TPS if "there exist extraordinary and temporary conditions in the foreign state that prevent aliens who are nationals of the state from returning to the state in safety, unless the [Secretary] finds that permitting the aliens to remain temporarily in the United States is contrary to the national interest of the United States." INA sec. 244(b)(1)(C), 8 U.S.C. 1254a(b)(1)(C).

Following the designation of a foreign state for TPS, the Secretary may grant TPS to eligible nationals of that foreign state (or aliens having no nationality who last habitually resided in that state). Applicants must demonstrate, among other things, that they have been both "continually physically present" in the United States since the effective date of the designation, which is either the date of the **Federal Register** notice announcing the designation or such later date as the Secretary may determine, and that they have "continuously resided" in the United States since such date as the Secretary may designate. INA secs. 244(a)(1)(A), (b)(2)(A), (c)(1)(A)(i–ii); 8 U.S.C. 1254a(a)(1)(A), (b)(2)(A), (c)(1)(A)(i–ii).

[1] As of March 1, 2003, in accordance with section 1517 of title XV of the Homeland Security Act of 2002 (HSA), Public Law 107–296, 116 Stat. 2135, any reference to the Attorney General in a provision of the INA describing functions transferred under the HSA from the Department of Justice to DHS "shall be deemed to refer to the Secretary [of Homeland Security]." *See* 6 U.S.C. 557 (codifying HSA, tit. XV, 1517).

Why is the Secretary designating South Sudan for TPS through May 2, 2013?

The Secretary has determined, after consultation with appropriate Government agencies, that there is an ongoing armed conflict in the Republic of South Sudan and that requiring the return of South Sudanese nationals to South Sudan would pose a serious threat to their personal safety. Furthermore, there exist extraordinary and temporary conditions in South Sudan that prevent nationals of South Sudan from returning in safety, and the Secretary does not find that permitting the aliens to remain temporarily in the United States is contrary to the national interest of the United States.

On July 9, 2011, South Sudan became the world's newest nation. Formal independence for South Sudan concluded the interim period of the January 2005 Comprehensive Peace Agreement (CPA) that ended more than two decades of civil war between the Government of Sudan in Khartoum and the Sudan People's Liberation Movement/Army (SPLM/A). These groups had been fighting for the autonomy of South Sudan. While some provisions of the CPA were upheld, many contentious issues remain unresolved and present potential for further conflict.

The April 2010 nationwide elections in Sudan did not meet international standards. Reported abuses in South Sudan included security force restrictions on and harassment of the opposition, including widespread human rights abuses. The January 2011 referendum itself, in which an overwhelming majority of registered South Sudanese voters chose independence, was largely peaceful. The CPA-mandated ceasefire between Sudan government forces and the SPLM/A was largely upheld (though outbreaks of violence did occur) until conflicts along the North-South border between Sudan and South Sudan erupted starting in May 2011.

During the past two years, South Sudan has experienced increasing violence related to intercommunal conflict, conflict between the SPLM/A and irregular armed forces, and targeted attacks on civilians by the Lord's Resistance Army (LRA). The transitional areas along the North-South border (Abyei, Blue Nile and Southern Kordofan) continued to suffer from inter-tribal tensions, and are flashpoints for violence involving government troops of both sides as well as irregular armed groups.

According to an early 2011 report by the Office of the United Nations High Commissioner for Refugees (UNHCR), during the past two years South Sudan has experienced increasing violence, mostly related to armed militia groups, including LRA and inter-tribal clashes. There are also reports of human rights abuses by southern security forces, including the police and the Sudan People's Liberation Army (SPLA). These reported abuses range from arbitrary detention to the killing of civilians. The SPLA also continues to have child soldiers within its ranks. The United Nations (UN) Security Council established the United Nations Mission in the Republic of South Sudan (UNMISS) to assist with "functions relating to humanitarian assistance, and protection and promotion of human rights." As of May 31, 2011, UNMISS had 9,264 troops out of an authorized 10,000 total military personnel. UNMISS troops have sustained 60 fatalities since the mission deployed.

In January 2011, UNHCR reported that LRA violence displaced some 600,000 additional people in the previous 18 months and has brought "a radical shift in patterns of violence [that] points to a clear targeting of women and children." LRA attacks in the western part of South Sudan were reported on a monthly basis throughout 2010. In most cases, these attacks were on vulnerable, isolated communities, with indiscriminate killing, abduction, rape, mutilation, looting, and destruction of property.

According to Human Rights Watch, throughout 2010 "[p]atterns of intercommunal violence stemming from cattle-rustling and other localized disputes across Southern Sudan continued to put civilians at risk of physical violence and killings." In addition to the upsurge in LRA and intercommunal violence, new conflicts have developed between government armed forces, and the ensuing violence has had a significant, negative humanitarian impact.

The transitional areas of Abyei, Blue Nile State, and Southern Kordofan/Nuba Mountains remain potential flashpoints because of their position along the North-South border, much of which remains undemarcated. As part of the CPA, the area of Abyei was to be jointly administered until local residents determined whether they would join the North or South, but the referendum has yet to be held. Reports indicate that in the months leading up to South Sudan's independence, both the Northern and Southern armies reinforced their positions near Abyei. On May 19, 2011, in a move condemned by the UN as a breach of the CPA, Sudanese troops attacked and took control of Abyei. On June 20, 2011, Sudan and South Sudan

reached an agreement on temporary administration measures and demilitarization of the area. As part of that agreement, the UN Security Council ordered a 4,200-strong Ethiopian peacekeeping force into the region to monitor the troops' withdrawal.

Violence has increased in South Kordofan. In June 2011, fighting between the Khartoum-based Sudan Armed Forces (SAF) and the SPLA erupted in the state capital of Kadugli. On June 25, 2011, the UN Office for the Coordination of Humanitarian Affairs (OCHA) reported that the SAF was conducting airstrikes and artillery shelling in the eastern and southern parts of the Nuba Mountains. Eyewitnesses stated that SAF forces killed people in the streets of Kadugli for looking "too black," with no regard for whether they supported the Southern army. According to the British Broadcasting Corporation, satellite imagery has located mass graves in Kordofan. The SAF actions further threaten the fragile peace between the North and South, as SAF bombing raids in Sudan's South Kordofan State have spilled across the border into South Sudan's Unity State.

In addition to the recent violence in Abyei and South Kordofan, there have been other indications that the peace treaty remains fragile. In January and February 2011, factions of the SAF stationed in South Sudan's Upper Nile State engaged in violent clashes. Reports indicated that the soldiers were fighting over weapons and whether they will relocate to the North as ordered after the results of the referendum favored independence. By extension, the failure to demobilize the 180,000 soldiers from both Sudan and South Sudan as required by the CPA is of further concern.

According to information on the UN Web page, "About South Sudan," 35.7 percent of the population in South Sudan is food-insecure and requires assistance, and 50 percent of the population does not have access to drinking water. South Sudan census results indicate that more than 50 percent of the population lives below the poverty line on less than one dollar a day, and 80 percent lack adequate sanitation. In January 2011, the World Food Programme warned of growing signs of drought in the Horn of Africa. As of July 21, 2011, OCHA reported that although the drought has not yet affected South Sudan directly, food security is fragile and the living situation remains uncertain as close to one million people are currently receiving food assistance and at least an additional 400,000 are expected to need assistance during this season. According to the U.S. Agency for International Development (USAID), mass population displacement caused by conflict in South Sudan since early 2011 caused the loss of lean season food stocks. As a result, most of the displaced are now in crisis and are relying on food assistance. USAID projects that ongoing conflict will likely impact crop cultivation and harvests and that the situation could worsen significantly because of the compounding impacts of insecurity, displacement, high food prices, and returnees from Sudan who increase competition for scarce resources.

Insecurity due to ongoing fighting, and the targeting of civilians for serious human rights abuses, has led to continued displacement of the South Sudanese population. Displacement and factors related to food insecurity—including drought, flooding, and rising food prices—are at the root of the ongoing humanitarian crisis. South Sudan is already considered one of the poorest, least-developed places in the world. The mass influx of South Sudanese returning from Sudan continues to strain limited resources, and high levels of humanitarian needs are reported in areas that have a high concentration of returnees.

According to the UN, approximately two million internally displaced persons (IDPs) and 350,000 refugees have returned to South Sudan since 2005. In late October 2010, the South Sudanese government began an accelerated return program. The number of returnees significantly increased, with an estimated 143,000 persons returning during October to December 2010. The South Sudanese government has been under significant strain trying to reintegrate and provide a safe environment for the existing returnees. Furthermore, there are still an estimated one million South Sudanese in Sudan. The estimated number of civilians killed in South Sudan during 2010 is 980. Between January and July 2011, more than 2,300 civilians were killed. An estimated 215,000 to 220,000 South Sudanese civilians became IDPs in 2010. Between January and July 2011, approximately 264,143 became IDPs.

There are multiple factors impeding delivery of humanitarian aid. It is estimated that there are fewer than 100 km of paved roads in South Sudan, and the accessibility of those roads is compromised during the rainy season. The ability of aid workers to provide much-needed humanitarian assistance is further compromised by dangers to aid workers but also by government prohibitions on operations and access to certain areas where large populations of persons in need of assistance are located. UNHCR and USAID report that insecurity and logistical concerns as well as weather conditions are likely to continue hindering access to areas of South Sudan.

Based on this review, and after consultation with the appropriate Government agencies, the Secretary has determined that:

- Requiring the return of South Sudanese nationals to South Sudan poses a serious threat to their personal safety due to an ongoing armed conflict. *See* INA sec. 244(b)(1)(A), 8 U.S.C. 1254a(b)(1)(A).
- Nationals of South Sudan cannot return to South Sudan in safety due to extraordinary and temporary conditions. *See* INA sec. 244(b)(1)(C), 8 U.S.C. 1254a(b)(1)(C).
- It is not contrary to the national interest of the United States to permit South Sudanese nationals (and persons without nationality who last habitually resided in the region that is now South Sudan) who meet the eligibility requirements of TPS to remain in the United States temporarily. *See* INA sec. 244(b)(1)(C), 8 U.S.C. 1254a(b)(1)(C).
- The designation of South Sudan for TPS should be for an 18-month period. *See* INA sec. 244(b)(2), 8 U.S.C. 1254a(b)(2).
- The date by which South Sudan TPS applicants must demonstrate that they have continuously resided in the United States is established as October 7, 2004, which is the same date that must be met by re-registering TPS applicants under the extension of TPS for Sudan. *See* INA sec. 244(c)(1)(A)(ii), 8 U.S.C. 1254a(c)(1)(A)(ii).
- The date by which South Sudan TPS applicants must demonstrate that they have been continuously physically present in the United States is November 3, 2011, the effective date of this TPS designation of South Sudan. *See* INA secs. 244(b)(2)(A), (c)(1)(A)(i); 8 U.S.C. 1254a(b)(2)(A), (c)(1)(A)(i).
- There are approximately 340 individuals who currently have TPS under the designation of Sudan. DHS estimates that the combined total of Sudanese and South Sudanese who will be eligible for TPS under this designation and the extension of TPS for Sudan is approximately 340. DHS recognizes that the actual number of registering South Sudanese applicants may be lower than 340, because some of those 340 individuals may re-register for Sudan TPS, while others may qualify to change their registration from TPS for Sudan to TPS for South Sudan.

Notice of the Designation of South Sudan for TPS

By the authority vested in me as Secretary of Homeland Security under section 244 of the Act, 8 U.S.C. 1254a, after consultation with the appropriate Government agencies, I designate the Republic of South Sudan for temporary protected status (TPS) under sections 244(b)(1)(A) and (C) of the Immigration and Nationality Act, 8 U.S.C. 1254a(b)(1)(A) and (C), for a period of 18 months from November 3, 2011 through May 2, 2013.

Janet Napolitano,

Secretary.

Required Application Forms and Application Fees to Register for TPS

To register for TPS, an applicant must submit:

1. Form I–821, Application for Temporary Protected Status,

• If you are not a TPS beneficiary under the Sudan designation (or have a pending TPS application under TPS Sudan), you must pay the Form I–821 application fee which is $50. If you are unable to pay the fee, you may submit a fee waiver request with appropriate documentation.

• If you are currently a TPS beneficiary under the Sudan designation (or you have a pending TPS Sudan application) but you are now a South Sudan national, you should file an initial application for South Sudan TPS. You do not, however, have to pay the Form I–821 $50 application fee again since you are currently a TPS beneficiary under Sudan (or have a pending TPS application under Sudan) and you have already paid the application fee (or been granted a fee waiver); and

2. Form I–765, Application for Employment Authorization.

• You must pay the Form I–765 application fee if you want an employment authorization document (EAD), Form I–766, or submit a fee waiver request.

• If you have a pending Form I–765 that you previously submitted with your request for TPS Sudan and you have not yet received your EAD with either a C–19 or A–12 notation, then you do not need to re-pay the I–765 application fee. You should submit a copy of your most recent USCIS fee receipt notice for the Form I–765, or your fee waiver grant notice, with your new I–765 application. Your fee (or fee waiver grant) will be applied to your application for an EAD under the South Sudan designation if your EAD has not been mailed to you yet.

• You do not pay the Form I–765 fee if you are under the age of 14 or over the age of 65 and you want an EAD since this is an initial registration.

• You do not pay the Form I–765 fee if you are not requesting an EAD.

You must submit both completed application forms together. If you are unable to pay, you may apply for application and/or biometrics fee waivers by completing a Request for Fee Waiver (Form I–912) or submitting a personal letter requesting a fee waiver, and providing satisfactory supporting documentation. For more information on the application forms and application fees for TPS, please visit the USCIS TPS Web page at *http://www.uscis.gov/tps* and click on "Temporary Protected Status for South Sudan." Fees for Form I–821, Form I–765, and biometric services are also listed in 8 CFR 103.7(b).

Biometric Services Fee

Biometrics (such as fingerprints) are required for all applicants 14 years of age or older. Those applicants must submit a biometric services fee. As previously stated, if you are unable to pay, you may apply for a biometrics services fee waiver by completing a Form I–912, or a personal letter requesting a fee waiver, and providing satisfactory supporting documentation. If you have a pending TPS application under the Sudan designation and you paid the biometrics fee, or received a fee waiver grant for that pending application, then you do not need to re-pay the biometrics fee. You should submit your USCIS fee receipt notice showing that you paid the fee, or notice of fee waiver, with your Form I–821 when applying under the designation for South Sudan. For more information on the biometric services fee, please visit the USCIS Web site at *http://www.uscis.gov*. You may be required to visit an Application Support Center to have your biometrics captured.

Refiling of TPS Application Packet After Receiving a Fee Waiver Denial

If you request a fee waiver when filing your TPS and EAD application forms and your request is denied, you may refile your application packet with the correct fees before the filing deadline April 10, 2012. If you receive the USCIS fee waiver denial and there are fewer than 45 days before the filing deadline, or the deadline has passed, you may still refile your application packet, with the correct fees, within the 45-day period after the date on the USCIS fee waiver denial notice. Your application packet and fees will not be rejected even if the deadline has passed, provided they are mailed within those 45 days and all other required information for the applications is included.

Mailing Information

Mail your application for TPS to the proper address in Table 1:

TABLE 1—MAILING ADDRESSES

If . . .	Mail to . . .
You are applying through the U.S. Postal Service	USCIS, P.O. Box 8677, Chicago, IL 60680–8677.
You are using a Non-U.S. Postal Service delivery service	USCIS, Attn: South Sudan TPS, 131 S. Dearborn 3rd Floor, Chicago, IL 60603–5517.

E-Filing

You cannot electronically file your application when applying for initial registration for TPS. Please mail your application to the mailing address listed in Table 1 above.

Supporting Documents

What type of basic supporting documentation must I submit?

To meet the basic eligibility requirements for TPS, you must submit evidence that you:

• Are a national of South Sudan or an alien of no nationality who last habitually resided in the region that is now South Sudan. Such documents may include a copy of your passport if available, other documentation issued by the Government of South Sudan (GSS) showing your nationality (*e.g.*, national identity card, official travel documentation issued by the GSS), and/or your birth certificate with English translation accompanied by photo identification. USCIS will also consider certain forms of secondary evidence

supporting your South Sudanese nationality, such as your voter registration documentation for the January 2011 referendum on South Sudan's independence. If the evidence presented is insufficient for USCIS to make a determination as to your nationality, USCIS may request you to provide additional evidence. DHS recognizes the unique situation regarding the availability of nationality documentation presented by the very recent creation of South Sudan. Therefore, if you do not possess primary evidence, such as a passport, of your South Sudanese citizenship, you should provide as much secondary evidence as you can with your TPS application to demonstrate your citizenship. If you have tried to obtain evidence of your South Sudanese nationality, but have been unsuccessful, you may also submit an affidavit showing proof of your unsuccessful efforts to obtain such documents and affirming that you are a national of South Sudan. However, please be aware that an interview with an immigration officer is required if you do not present any documentary proof of identity or nationality. (*See* 8 CFR 244.9(a)(1));

- Have continually resided in the United States since October 7, 2004 (*see* 8 CFR 244.9(a)(2));
- Have been continually physically present in the United States since November 3, 2011, the effective date of the designation of South Sudan; and
- Two color passport-style photographs of yourself.

The filing instructions on Form I–821, Application for Temporary Protected Status, list all the documents needed to establish basic eligibility for TPS. You may also see information on the acceptable documentation and other requirements for applying for TPS on the USCIS Web site at *http://www.uscis.gov* under "Temporary Protected Status for South Sudan."

Do I need to submit additional supporting documentation?

If one or more of the questions listed in Part 4, Question 2 of the Form I–821 applies to you, then you must submit an explanation on a separate sheet(s) of paper and/or additional documentation. Depending on the nature of the question(s) you are addressing, additional documentation alone may suffice, but usually a written explanation will also be needed.

Employment Authorization Document (EAD) (Form I–766)

May I request an interim EAD at my local USCIS office?

No. USCIS will not issue interim EADs to TPS applicants at USCIS local offices.

Am I eligible to receive an automatic 6-month extension if I have a current EAD under Sudan TPS that expires November 2, 2011?

You will receive an automatic 6-month extension from November 2, 2011 through May 2, 2012, of your EAD if you:

- Received an EAD under the last extension of TPS for Sudan, and
- Have not had TPS withdrawn or denied.

This automatic extension is limited to EADs with an expiration date of November 2, 2011. These EADs must also bear the notation "A–12" or "C–19" on the face of the card under "Category."

When hired, what documentation may I show to my employer as proof of employment authorization and identity when completing employment eligibility verification, Form I–9?

You can find a list of acceptable document choices on page 5 of the Employment Eligibility Verification form, Form I–9. Employers are required to verify the identity and employment authorization of all new employees by using Form I–9. Within three days of hire, an employee must present proof of identity and employment authorization to his or her employer.

You may present any document from List A (reflecting both your identity and employment authorization), or one document from List B (reflecting identity) together with one document from List C (reflecting employment authorization). An EAD is an acceptable document under "List A."

If you received a 6-month automatic extension of your EAD issued under Sudan TPS as described in this **Federal Register** notice, you may choose to present your automatically extended EAD, as described above, to your employer as proof of identity and employment authorization for Form I–9 through May 2, 2012 (see the subsection below titled "How do I and my employer complete Form I–9 (i.e., verification) using an automatically extended EAD for a new job" for further information). To minimize confusion over this extension at the time of hire, you may also show a copy of this **Federal Register** notice regarding the automatic extension of employment authorization through May 2, 2012 to your employer. As an alternative to presenting your automatically extended EAD, you may choose to present any other acceptable document from List A, or List B plus List C.

What documentation may I show my employer if I am already employed but my current TPS-related EAD is set to expire?

You must present any document from List A or any document from List C on Form I–9 to reverify employment authorization. Employers are required to reverify on Form I–9 the employment authorization of current employees upon the expiration of a TPS-related EAD.

If you received a 6-month automatic extension of your EAD as described in this **Federal Register** notice, your employer does not need to reverify until after May 2, 2012. However, you and your employer do need to make corrections to the employment authorization expiration dates in Section 1 and Section 2 of the Form I–9 (see the subsection below titled "*What corrections should my employer at my current job and I make to Form I–9 if my EAD has been automatically extended*?" for further information). In addition, you may also show this **Federal Register** notice to your employer to avoid confusion about whether or not your expired TPS-related document is acceptable. After May 2, 2012, when the automatic extension expires, your employer must reverify your employment authorization. You may show any document from List A or List C on Form I–9 to satisfy this reverification requirement.

What happens after May 2, 2012 for purposes of employment authorization?

After May 2, 2012, employers may not accept the EADs that were automatically extended as described in this **Federal Register** notice. However, USCIS will issue new EADs to TPS re-registrants. These EADs will have an expiration date of May 2, 2013 and can be presented to your employer as proof of employment authorization and identity. The EAD will bear the notation "A–12" or "C–19" on the face of the card under "Category." Alternatively, you may choose to present any other legally acceptable document or combination of documents listed on the Form I–9 to prove identity and employment authorization.

How do my employer and I complete Form I–9 (i.e., verification) using an automatically extended EAD for a new job?

When using an automatically extended EAD to fill out Form I–9 for a new job prior to May 2, 2012, you and your employer should do the following:

(1) For Section 1, you should:

a. Check "An alien authorized to work;"

b. Write your alien number (A-number) in the first space (your EAD or other document from DHS will have your A-number printed on it); and

c. Write the automatic extension date in the second space.

(2) For Section 2, employers should:

a. Record the document title;

b. Record the document number; and

c. Record the automatically extended EAD expiration date.

After May 2, 2012, employers must reverify the employee's employment authorization in Section 3 of Form I–9.

What corrections should my employer at my current job and I make to Form I–9 if my EAD has been automatically extended?

If you are an existing employee who presented a TPS EAD that was valid when you first started your job, but that EAD has now been automatically extended, you and your employer should correct your previously completed Form I–9 as follows:

(1) For Section 1, you should:

a. Draw a line through the expiration date in the second space;

b. Write "May 2, 2012" above the previous date;

c. Write "TPS Ext." in the margin of Section 1; and

a. Initial and date the correction in the margin of Section 1.

(2) For Section 2, employers should:

a. Draw a line through the expiration date written in Section 2;

b. Write "May 2, 2012" above the previous date;

c. Write "TPS Ext." in the margin of Section 2; and

d. Initial and date the correction in the margin of Section 2.

After May 2, 2012, when the automatic extension of EADs expires, employers must reverify the employee's employment authorization in Section 3.

If I am an employer enrolled in E-Verify, what do I do when I receive a "Work Authorization Documents Expiring" alert for an automatically extended EAD?

If you are an employer who participates in E-Verify, you will receive a "Work Authorization Documents Expiring" case alert when a TPS beneficiary's EAD is about to expire. Usually, this message is an alert to complete Section 3 of Form I–9 to reverify an employee's employment authorization. For existing employees with TPS EADs that have been automatically extended, employers should disregard the E-Verify case alert and follow the instructions above explaining how to correct Form I–9. After May 2, 2012, employment authorization needs to be reverified in Section 3. You should never use E-Verify for reverification.

Can my employer require that I produce any other documentation to prove my status, such as proof of my South Sudanese citizenship?

No. When completing the Form I–9, employers must accept any documentation that appears on the lists of acceptable documentation, and that reasonably appears to be genuine and that relates to you. Employers may not request documentation that does not appear on the Form I–9. Therefore, employers may not request proof of South Sudanese citizenship when completing Form I–9. If presented with EADs that are unexpired on their face, employers should accept such EADs as valid "List A" documents so long as the EADs reasonably appear to be genuine and to relate to the employee. See below for important information about your rights if your employer rejects lawful documentation, requires additional documentation, or otherwise discriminates against you because of your citizenship or immigration status, or national origin.

Note to Employers

Employers are reminded that the laws requiring employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those rules setting forth reverification requirements. For questions, employers may call the USCIS Customer Assistance Office at 1–800–357–2099. The USCIS Customer Assistance Office accepts calls in English and Spanish only. Employers may also call the Department of Justice (DOJ) Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) Employer Hotline at 1–800–255–8155.

Note to Employees

Employees or applicants may call the DOJ OSC Worker Information Hotline at 1–800–255–7688 for information regarding employment discrimination based upon citizenship or immigration status, or national origin, unfair documentary practices related to the Form I–9, or discriminatory practices related to E-Verify. Employers must accept any document or combination of documents acceptable for Form I–9 completion if the documentation reasonably appears to be genuine and to relate to the employee. Employers may not require extra or additional documentation beyond what is required for Form I–9 completion. Further, employees who receive an initial mismatch via E-Verify must be given an opportunity to challenge the mismatch, and employers are prohibited from taking adverse action against such employees based on the initial mismatch unless and until E-Verify returns a final nonconfirmation. The Hotline accepts calls in multiple languages. Additional information is available on the OSC Web site at *http://www.justice.gov/crt/osc/.*

Note Regarding Federal, State, and Local Government Agencies (Such as Departments of Motor Vehicles)

State and local government agencies are permitted to create their own guidelines when granting certain benefits, such as a driver's license or an identification card. Each state may have different laws, requirements, and determinations about what documents you need to provide to prove eligibility for certain benefits. If you are applying for a state or local government benefit, you may need to provide the state or local government agency with documents that show you are a TPS beneficiary and/or show you are authorized to work based on TPS. Examples are:

(1) Your expired EAD that has been automatically extended, or your EAD that has a valid expiration date;

(2) A copy of this **Federal Register** notice if you have an automatically extended EAD;

(3) A copy of your Application for Temporary Protected Status, Form I–821 Receipt Notice (Form I–797) only if you have an automatically extended EAD;

(4) A copy of your Form I–821 Approval Notice (Form I–797) for this designation; and

(5) If there is an automatic extension of work authorization, a copy of the fact sheet from the USCIS TPS Web site that provides information on the automatic extension.

Check with the state or local agency regarding which document(s) the agency will accept.

Some benefit-granting agencies use the USCIS Systematic Alien Verification for Entitlements Program (SAVE) to verify the current immigration status of applicants for public benefits. If such an agency has denied your application based solely or in part on a SAVE response following completion of all required SAVE verification steps, the agency must offer you the opportunity to appeal the decision in accordance with the agency's procedures. If the agency has completed all SAVE verification and you do not believe the response is correct, you may make an Info Pass appointment for an in-person interview at a local USCIS office. Detailed information on how to make corrections, make an appointment, or submit a written request can be found at the SAVE Web site at *http://www.uscis.gov/save*, then by choosing "How to Correct Your Records" from the menu on the right.

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DEPARTMENT OF HOMELAND SECURITY

Citizenship and Immigration Services

[CIS No. 2512–11; DHS Docket No. USCIS–2011–0013]

RIN 1615–ZB07

Extension of the Designation of Sudan for Temporary Protected Status and Automatic Extension of Employment Authorization Documentation for Sudanese TPS Beneficiaries

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This Notice announces that the Secretary of Homeland Security (Secretary) has extended the designation of Sudan for temporary protected status (TPS) for 18 months from its current expiration date of November 2, 2011 through May 2, 2013. The Secretary has determined that an extension is warranted because the conditions in Sudan that prompted the TPS designation continue to be met. There continues to be a substantial, but temporary, disruption of living conditions in Sudan based upon ongoing armed conflict and extraordinary and temporary conditions in that country that prevent Sudanese who now have TPS from returning in safety.

This Notice also sets forth procedures necessary for nationals of Sudan (or aliens having no nationality who last habitually resided in Sudan) with TPS to re-register and to apply for an extension of their Employment Authorization Documents (EADs) with U.S. Citizenship and Immigration Services (USCIS). Re-registration is limited to persons who previously registered for TPS under the designation of Sudan and whose applications have been granted or remain pending. Certain nationals of Sudan (or aliens having no nationality who last habitually resided in Sudan) who have not previously applied for TPS may be eligible to apply under the late initial registration provisions.

USCIS will issue new EADs with a May 2, 2013 expiration date to eligible Sudanese TPS beneficiaries who timely re-register and apply for EADs under this extension. Given the timeframes involved with processing TPS re-registration applications, DHS recognizes that all re-registrants may not receive new EADs until after their current EADs expire on November 2, 2011. Accordingly, this Notice automatically extends the validity of EADs issued under the TPS designation of Sudan for 6 months, through May 2, 2012, and explains how TPS beneficiaries and their employers may determine which EADs are automatically extended and how the extension affects employment eligibility verification (Form I–9 and E–Verify) processes.

In a separate **Federal Register** Notice issued on October 13, 2011, the Secretary designated the newly formed Republic of South Sudan for TPS. Some individuals who are TPS beneficiaries under the current designation of Sudan may now be nationals of South Sudan, calling into question their continued eligibility for TPS under the Sudan designation. These individuals may, however, now qualify for TPS under South Sudan. The South Sudan Notice sets forth regular procedures and special procedures necessary for nationals of South Sudan (or aliens having no nationality who last habitually resided in the region that is now South Sudan) to register and to apply for TPS and EADs with USCIS.

DATES: The 18-month extension of the TPS designation of Sudan is effective November 3, 2011, and will remain in effect through May 2, 2013. The 180-day re-registration period begins October 13, 2011, and will remain in effect until April 10, 2012.

FOR FURTHER INFORMATION:

- For further information on TPS, including guidance on the application process and additional information on eligibility, please visit the TPS Web page at *http://www.uscis.gov/tps*. You can find specific information about this extension and about TPS for Sudan by selecting "TPS Designated Country—Sudan" from the menu on the left of the TPS Web page. From the Sudan page, you can select the Sudan TPS Questions & Answers Section from the menu on the right for further information. Additionally, information about TPS for South Sudan can be found at the USCIS TPS Web page under the subheading "South Sudan."
- You can also contact the TPS Operations Program Manager at Status and Family Branch, Service Center Operations Directorate, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., Washington, DC 20529–2060; or by phone at (202) 272–1533 (this is not a toll-free number).

Note: The phone number provided here is solely for questions regarding this TPS notice. It is not for individual case status inquiries.

- Applicants seeking information about the status of their individual cases can check Case Status Online available at the USCIS Web site at *http://www.uscis.gov*, or call the USCIS National Customer Service Center at 1–800–375–5283 (TTY 1–800–767–1833).
- Further information will also be available at local USCIS offices upon publication of this Notice.

SUPPLEMENTARY INFORMATION:

Abbreviations and Terms Used in This Document

CPA—Comprehensive Peace Agreement.
DHS—Department of Homeland Security.
DOS—Department of State.
EAD—Employment Authorization Document.
Government—U.S. Government.
GOS—Government of Sudan.
INA—Immigration and Nationality Act.
JEM—Justice & Equality Movement.
NCP—National Congress Party.
OSC—U.S. Department of Justice, Office of Special Counsel for Immigration-Related Unfair Employment Practices.
Secretary—Secretary of Homeland Security.
South Sudan—Republic of South Sudan.
SPLM—Sudan People's Liberation Movement.
SPLM/A—Sudan People's Liberation Movement/Army.
TPS—Temporary Protected Status.
USAID—U.S. Agency for International Development.
USCIS—U.S. Citizenship and Immigration Services.

What is temporary protected status (TPS)?

- TPS is an immigration status granted to eligible nationals of a country designated for TPS under the Act (or to persons without nationality who last habitually resided in the designated country).
- During the TPS designation period, TPS beneficiaries are eligible to remain in the United States and may obtain work authorization, so long as they continue to meet the requirements of TPS.
- The granting of TPS does not lead to permanent resident status.
- When the Secretary of Homeland Security (Secretary) terminates a country's TPS designation, beneficiaries return to the same immigration status they maintained before TPS (unless that status has since expired or been terminated) or to any other lawfully obtained immigration status they received while registered for TPS.

When was Sudan designated for TPS?

On November 4, 1997, the Attorney General designated Sudan for TPS based on an ongoing armed conflict and extraordinary and temporary conditions within that country. *See* 62 FR 59737; section 244(a)(b)(1)(A), (C) of the Immigration and Nationality Act (INA), 8 U.S.C. 1254a(b)(1)(A), (C). Following the initial designation of Sudan for TPS in 1997, the Attorney General and, later, the Secretary have extended TPS and/or redesignated Sudan for TPS a total of 12 times, including this extension. *See* 74 FR 69355 (Dec. 31, 2009) (describing the complete history of Sudan TPS extensions and redesignations). In the 2004 redesignation of Sudan, the Secretary established October 7, 2004, as the date by which TPS Sudan applicants must demonstrate that they have been continuously residing and continuously physically present in the United States. 69 FR 60168 (Oct. 7, 2004). The last extension of TPS for Sudan was announced on December 31, 2009, based on the Secretary's determination that the conditions warranting the designation continued to be met. There has been no change to the October 7, 2004 "continuous residence" and "continuous physical presence" date requirements since 2004.

What authority does the Secretary of Homeland Security have to extend the designation of Sudan for TPS?

Section 244(b)(1) of the INA, 8 U.S.C. 1254a(b)(1), authorizes the Secretary, after consultation with appropriate Government agencies, to designate a foreign state (or part thereof) for TPS.[1] The Secretary may then grant TPS to eligible nationals of that foreign state (or aliens having no nationality who last habitually resided in that state). *See* INA sec. 244(a)(1)(A), 8 U.S.C. 1254a(a)(1)(A).

At least 60 days before the expiration of a country's TPS designation or extension, the Secretary, after consultation with appropriate Government agencies, must review the conditions in a foreign state designated for TPS to determine whether the conditions for the TPS designation continue to be met. *See* INA sec. 244(b)(3)(A), 8 U.S.C. 1254a(b)(3)(A). If the Secretary determines that a foreign state continues to meet the conditions for TPS designation, the designation is extended for an additional 6 months (or in the Secretary's discretion for 12 or 18 months). *See* INA sec. 244(b)(3)(C), 8 U.S.C. 1254a(b)(3)(C). If the Secretary determines that the foreign state no longer meets the conditions for TPS designation, the Secretary must terminate the designation. *See* INA sec. 244(b)(3)(B) of the Act, 8 U.S.C. 1254a(b)(3)(B).

Why is the Secretary extending the TPS designation for Sudan through May 2, 2013?

Over the past year, the Department of Homeland Security (DHS) and the Department of State (DOS) have continued to review conditions in Sudan. Based on this review and after consulting with DOS, the Secretary has determined that an 18-month extension is warranted because the armed conflict is ongoing, although there have been a few improvements, and the extraordinary and temporary conditions that prompted the October 7, 2004 redesignation persist.

Sudan's 22-year civil war formally ended in 2005 with the signing of the Comprehensive Peace Agreement (CPA) between the north's Government of Sudan in Khartoum and its ruling National Congress Party (NCP) and the south's Sudan People's Liberation Movement/Army (SPLM/A). Sudan accomplished two key requirements of the CPA by holding national and local elections in April 2010 and holding the referendum on independence for South Sudan in January 2011. Following referendum results indicating approximately 98 percent of registered South Sudanese voted for secession, the new nation of South Sudan was officially created on July 9, 2011.

While the formal armed conflict between the north and south has ended, the violence in Sudan and South Sudan continues. The challenges of partitioning the country have created new conflicts and complicated existing disputes between the north and south. Additionally, several groups, including numerous nonaligned Sudanese militias, threaten the long-term security of the region.

In spite of milestone accomplishments under the CPA, serious impediments to the peace process remain and the civilian population continues to suffer harm related to ongoing conflict in various parts of Sudan. Contentious issues between Sudan and South Sudan remain to be negotiated, including demarcation of the border, the citizenship status of displaced persons, and the sharing of vital natural resources, such as Nile River water and oil reserves in South Sudan. The failure to formally demobilize the 180,000 soldiers from both Sudan and South Sudan as required by the CPA is of further concern. As of early 2011, only about 400 soldiers across the entire country have completed the demobilization process.

In Darfur, fighting between government and rebel forces continues and has caused the widespread displacement of civilians. The CPA does not cover the Darfur region of western Sudan. Despite numerous attempts to negotiate peace between government forces and the various amalgamations of militia groups, conflict in Darfur is ongoing. In 2003, two rebel groups, the SPLM and the Justice and Equality Movement (JEM), led an insurrection against the Government of Sudan (GOS). In response, the GOS reportedly armed local rival tribes and militia known collectively as the "Janjaweed." According to U.S. Government reports, attacks on the civilian population by the Janjaweed, often with the direct support of the GOS, have led to the deaths of hundreds of thousands of people in Darfur. The UN estimated in 2006 that 200,000 persons had died as a result of the conflict and that by 2008 an additional 100,000 may have died. An estimated 1.9 million civilians have been internally displaced, and approximately 280,000 refugees have fled to neighboring Chad. Fighting in Darfur includes armed clashes between government and rebel forces, among rebel factions, and between armed

[1] As of March 1, 2003, in accordance with section 1517 of title XV of the Homeland Security Act of 2002 (HSA), Public Law 107–296, 116 Stat. 2135, any reference to the Attorney General in a provision of the INA describing functions transferred from the Department of Justice to the Department of Homeland Security "shall be deemed to refer to the Secretary" of Homeland Security. *See* 6 U.S.C. 557 (codifying HSA, tit. XV, sec. 1517).

ethnic Arab groups. In the first half of 2010, armed clashes resulted in the highest number of deaths in the Darfur conflict since 2008, with armed clashes occurring in all three Darfur states. In more than seven years of the Darfur conflict, a series of periodic ceasefires between the GOS and various rebel groups have all subsequently quickly fallen apart. Despite formal international efforts to negotiate peace within the region, the peace process has floundered. In 2009 through early 2011, fighting between the GOS and various rebel groups escalated.

The transitional areas of Abyei, Blue Nile and Southern Kordorfan, located along the contentious north-south border, continue to be flashpoints for positional violence. Clashes that began on June 6 in Southern Kordofan State between the Sudanese Armed Forces (SAF) and forces loyal to the Sudan People's Liberation Army (SPLA) displaced up to 73,000 people, according to unconfirmed estimates. Violations of human rights and international humanitarian law have been reported in the state, and humanitarian access is limited. There is potential for violence also to flare in Blue Nile. On May 21, the Sudan Armed Forces took over the Abyei Area, a disputed territory in the middle of what was then Sudan, displacing an estimated 100,000 people.

While the northern and eastern parts of Sudan have not recently experienced the same level of violence that has plagued Darfur, the disputed Abyei region, South Kordofan, and Southern Sudan, human rights abuses continue throughout the country. For example, numerous persons were detained following demonstrations in January 2011.

In eastern Sudan, the political and security situation remained relatively calm, due, in part, to the Eastern Sudan Peace Agreement between GOS and rebels from the Eastern Front. A number of issues have not been fully addressed, however, including growing poverty, economic marginalization, security vulnerabilities, as well as the Eastern Front splitting into three groups.

A myriad of factors contribute to the ongoing humanitarian crisis in Sudan. Sporadic eruptions of political and intercommunal violence caused civilian deaths, continued displacement of the population, and general instability. Natural disasters have compounded the harm suffered by the population in some regions. Drought and flooding continue to increase food insecurity and concerns of malnutrition. Delivery of humanitarian aid continues to be threatened by attacks against aid workers and GOS restrictions on the operations of humanitarian organizations.

Sudan is the largest humanitarian aid recipient in the world, with the international community providing approximately $1.3 billion in humanitarian assistance in 2009. Reports from the U.S. Agency for International Development (USAID) and the World Food Programme indicate that in addition to coping with the effects of conflict and displacement, the country continues to struggle with perennial environmental shocks, such as flooding and droughts, which further compound the country's vulnerabilities and have led to food shortages and budget constraints. U.S. Government reports indicate that food insecurity in Darfur is considered an emergency concern. In eastern Sudan, chronic poverty and development needs persist throughout the region, which has experienced slow recovery following decades of conflict.

While certain provisions of the 2005 CPA have generally been upheld, many contentious issues remain unresolved and present potential for conflict. The transitional areas along the Sudan-South Sudan border remain flashpoints for potential violence. Violence and ensuing population displacement, compounded by environmental and economic factors, have created one of the worst humanitarian crises in the world. Despite encouraging incidents of progress toward peace, Sudan's overall internal security and political stability remain fragile and unpredictable.

Based upon this review and after consultation with appropriate Government agencies, the Secretary finds that:

- The conditions that prompted the October 7, 2004 redesignation of Sudan for TPS continue to be met. *See* INA sec. 244(b)(3)(A), 8 U.S.C. 1254a(b)(3)(A).
- There continues to be an ongoing armed conflict and extraordinary and temporary conditions in Sudan that prevent Sudanese nationals from returning to Sudan in safety. *See* INA sec. 244(b)(1)(A), (C), 8 U.S.C. 1254a(b)(1)(A), (C).
- It is not contrary to the national interest of the United States to permit Sudanese (and persons who have no nationality who last habitually resided in Sudan) who meet the eligibility requirements of TPS to remain in the United States temporarily. *See* INA sec. 244(b)(1)(C), 8 U.S.C. 1254a(b)(1)(C).
- The designation of Sudan for TPS should be extended for an additional 18-month period. *See* INA sec. 244(b)(3)(C), 8 U.S.C. 1254a(b)(3)(C).
- There are approximately 340 individuals who currently have TPS under the designation of Sudan. DHS estimates that the combined total of Sudanese and South Sudanese who will be eligible for TPS under the South Sudan designation and the extension of TPS for Sudan is approximately 340. DHS recognizes that the actual number of re-registering Sudan TPS applicants may be lower than 340, because some of those 340 individuals may apply and qualify for registration under the new South Sudan TPS designation.

Notice of Extension of the TPS Designation of Sudan

By the authority vested in me as Secretary of Homeland Security under section 244 of the INA, 8 U.S.C. 1254a, I have determined, after consultation with the appropriate Government agencies, that the conditions that prompted the redesignation of Sudan for temporary protected status (TPS) on October 7, 2004 continue to be met. *See* INA sec. 244(b)(3)(A) of the Act, 8 U.S.C. 1254a(b)(3)(A). On the basis of this determination, I am extending the TPS designation of Sudan for 18 months from its current expiration on November 2, 2011 through May 2, 2013.

Janet Napolitano,

Secretary.

Required Application Forms and Application Fees To Register or Re-Register for TPS

To Register or Re-Register for TPS for Sudan, an Applicant Must Submit

1. Application for Temporary Protected Status, Form I–821,

- You only need to pay the Form I–821 application fee if you are filing an application for late initial registration. *See* 8 CFR 244.2(f)(2) and information on late initial filing on the USCIS Web site at *http://www.uscis.gov* under "Temporary Protected Status for Sudan."
- You do not need to pay the Form I–821 fee for a re-registration;

and

2. Application for Employment Authorization, Form I–765.

- If you are applying for re-registration, you must pay the Form I–765 application fee only if you want an Employment Authorization Document (EAD).
- If you are applying for late initial registration and want an EAD, you must pay the Form I–765 fee only if you are age 14 through 65. No EAD fee is required if you are under the age of 14 or over the age of 65 and applying for late initial registration.

• You do not pay the Form I–765 fee if you are not requesting an EAD.

You must submit both completed application forms together. If you are unable to pay, you may apply for application and/or biometrics fee waivers by completing a Request for Fee Waiver (Form I–912) or submitting a personal letter requesting a fee waiver, and providing satisfactory supporting documentation. For more information on the application forms and fees for TPS, please visit the USCIS TPS Web page at *http://www.uscis.gov/tps* and click on "Temporary Protected Status for Sudan." Fees for Form I–821, Form I–765, and biometric services are also described in 8 CFR 103.7(b).

Biometric Services Fee

Biometrics (such as fingerprints) are required for all applicants 14 years of age or older. Those applicants must submit a biometric services fee. As previously stated, if you are unable to pay, you may apply for a biometrics fee waiver by completing a Form I–912, or a personal letter requesting a fee waiver, and providing satisfactory supporting documentation. For more information on the biometric services fee, please visit the USCIS Web site at *http://www.uscis.gov*. If necessary, you may be required to visit an Application Support Center to have your biometrics captured.

Refiling After Receiving a Denial of a Fee Waiver Request

USCIS urges all re-registering applicants to file as soon as possible within the 180-day re-registration period so that USCIS can promptly process the applications and issue EADs. Filing early will also allow those applicants who may receive denials of their fee waiver requests to have time to pay the appropriate fees and refile their applications *before* the re-registration deadline. If, however, an applicant receives a denial of his or her fee waiver request and is unable to refile with the appropriate fees by the re-registration deadline, the applicant may still refile his or her applications. This situation will constitute good cause for late re-registration. *See* 8 CFR 244.17. However, applicants are urged to refile within 45 days of the date on their USCIS fee waiver denial notice if at all possible. For more information on good cause for late re-registration, please look at the Questions & Answers for Sudan TPS found on the USCIS TPS Web page for Sudan.

Mailing Information

Mail your application for TPS to the proper address in Table 1:

TABLE 1–MAILING ADDRESSES

If	Mail to
You are applying for re-registration through the U.S. Postal Service	USCIS, P.O. Box 8677, Chicago, IL 60680–8677.
You are applying for the first time as a late initial registrant through the U.S. Postal Service.	USCIS, P.O. Box 8677, Chicago, IL 60680–8677.
You are using a Non-U.S. Postal Service delivery service for either re-registration or first-time late initial registration.	USCIS, Attn: TPS Sudan, 131 S. Dearborn 3rd Floor, Chicago, IL 60603–5517.

E-Filing

You cannot electronically file your application when re-registering or applying for late initial registration for Sudan TPS. Please mail your application to the mailing address listed in Table 1 above.

Employment Authorization Document (EAD)

May I request an interim EAD at my local USCIS office?

No. USCIS will not issue interim EADs to TPS applicants and re-registrants at local offices.

Am I eligible to receive an automatic 6-month extension of my current EAD from November 2, 2011 through May 2, 2012?

You will receive an automatic 6-month extension of your EAD if you:

• Are a national of Sudan, an alien having no nationality who last habitually resided in Sudan, or a new national of South Sudan who received an EAD under the last extension of TPS for Sudan;

• Received an EAD under the last extension of TPS for Sudan; and

• Have not had TPS withdrawn or denied.

This automatic extension is limited to EADs with an expiration date of November 2, 2011. These EADs must also bear the notation "A–12" or "C–19" on the face of the card under "Category."

When hired, what documentation may I show to my employer as proof of employment authorization and identity when completing Employment Eligibility Verification, Form I–9?

You can find a list of acceptable document choices on page 5 of the Employment Eligibility Verification, Form I–9. Employers are required to verify the identity and employment authorization of all new employees by using Form I–9. Within three days of hire, an employee must present proof of identity and employment authorization to his or her employer.

You may present any document from List A (reflecting both your identity and employment authorization), or one document from List B (reflecting identity) together with one document from List C (reflecting employment authorization). An EAD is an acceptable document under "List A."

If you received a 6-month automatic extension of your EAD by virtue of this **Federal Register** notice, you may choose to present your automatically extended EAD, as described above, to your employer as proof of identity and employment authorization for Form I–9 through May 2, 2012 (see the subsection below titled "*How do my employer and I complete Form I–9 (i.e.*, verification) *using an automatically extended EAD for a new job?*" for further information). To minimize confusion over this extension at the time of hire, you may also show a copy of this **Federal Register** notice regarding the automatic extension of employment authorization through May 2, 2012 to your employer. As an alternative to presenting your automatically extended EAD, you may choose to present any other acceptable document from List A, or List B plus List C.

What documentation may I show my employer if I am already employed but my current TPS–related EAD is set to expire?

You must present any document from List A or any document from List C on Form I–9 to reverify employment authorization. Employers are required to reverify on Form I–9 the employment authorization of current employees upon the expiration of a TPS-related EAD.

If you received a 6-month automatic extension of your EAD by virtue of this **Federal Register** notice, your employer does not need to reverify until after May

2, 2012. However, you and your employer *do* need to make corrections to the employment authorization expiration dates in Section 1 and Section 2 of the Form I–9 (see the subsection below titled "*What corrections should my employer at my current job and I make to Form I–9 if my EAD has been automatically extended?*" for further information). In addition, you may also show this **Federal Register** notice to your employer to avoid confusion about whether or not your expired TPS-related document is acceptable. After May 2, 2012, when the automatic extension expires, your employer must reverify your employment authorization. You may show any document from List A or List C on Form I–9 to satisfy this reverification requirement.

What happens after May 2, 2012 for purposes of employment authorization?

After May 2, 2012, employers may not accept the EADs that were automatically extended by this **Federal Register** notice. However, USCIS will issue new EADs to TPS re-registrants. These EADs will have an expiration date of May 2, 2013 and can be presented to your employer as proof of employment authorization and identity. The EAD will bear the notation "A–12" or "C–19" on the face of the card under "Category." Alternatively, you may choose to present any other legally acceptable document or combination of documents listed on the Form I–9 to prove identity and employment authorization.

How do my employer and I complete Form I–9 (i.e., Verification) using an automatically extended EAD for a new job?

When using an automatically extended EAD to fill out Form I–9 for a new job prior to May 2, 2012, you and your employer should do the following:

(1) For Section 1, you should:

a. Check "An alien authorized to work;"

b. Write your alien number (A-number) in the first space (your EAD or other document from DHS will have your A-number printed on it); and

c. Write the automatic extension date in the second space.

(2) For Section 2, employers should:

a. Record the document title;

b. Record the document number; and

c. Record the automatically extended EAD expiration date.

After May 2, 2012, employers must reverify the employee's employment authorization in Section 3 of Form I–9.

What corrections should my employer at my current job and I make to Form I–9 if my EAD has been automatically extended?

If you are an existing employee who presented a TPS EAD that was valid when you first started your job, but that EAD has now been automatically extended, you and your employer should correct your previously completed Form I–9 as follows:

(1) For Section 1, you should:

a. Draw a line through the expiration date in the second space;

b. Write "May 2, 2012" above the previous date;

c. Write "TPS Ext." in the margin of Section 1; and

a. Initial and date the correction in the margin of Section 1.

(2) For Section 2, employers should:

a. Draw a line through the expiration date written in Section 2;

b. Write "May 2, 2012" above the previous date;

c. Write "TPS Ext." in the margin of Section 2; and

d. Initial and date the correction in the margin of Section 2.

After May 2, 2012, when the automatic extension of EADs expires, employers must reverify the employee's employment authorization in Section 3.

If I am an employer enrolled in E-Verify, what do I do when I receive a "Work Authorization Documents Expiring" alert for an automatically extended EAD?

If you are an employer who participates in E-Verify, you will receive a "Work Authorization Documents Expiring" case alert when a TPS beneficiary's EAD is about to expire. Usually, this message is an alert to complete Section 3 of Form I–9 to reverify an employee's employment authorization. For existing employees with TPS EADs that have been automatically extended, employers should disregard the E-Verify case alert and follow the instructions above explaining how to correct Form I–9. After May 2, 2012, employment authorization needs to be reverified in Section 3. You should never use E–Verify for reverification.

Can my employer require that I produce any other documentation to prove my status, such as proof of my Sudanese or South Sudanese Citizenship?

No. When completing the Form I–9, employers must accept any documentation that appears on the lists of acceptable documentation, and that reasonably appears to be genuine and that relates to you. Employers may not request documentation that does not appear on the Form I–9. Therefore, employers may not request proof of Sudanese or South Sudanese citizenship when completing Form I–9. If presented with EADs that have been automatically extended pursuant to this **Federal Register** notice or EADs that are unexpired on their face, employers should accept such EADs as valid "List A" documents so long as the EADs reasonably appear to be genuine and to relate to the employee. See below for important information about your rights if your employer rejects lawful documentation, requires additional documentation, or otherwise discriminates against you because of your citizenship or immigration status, or national origin.

Note to All Employers

Employers are reminded that the laws requiring employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those rules setting forth reverification requirements. For questions, employers may call the USCIS Customer Assistance Office at 1–800–357–2099. The USCIS Customer Assistance Office accepts calls in English and Spanish only. Employers may also call the Department of Justice (DOJ) Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) Employer Hotline at 1–800–255–8155.

Note to Employees

Employees or applicants may call the DOJ OSC Worker Information Hotline at 1–800–255–7688 for information regarding employment discrimination based upon citizenship or immigration status, or national origin, unfair documentary practices related to the Form I–9, or discriminatory practices related to E-Verify. Employers must accept any document or combination of documents acceptable for Form I–9 completion if the documentation reasonably appears to be genuine and to relate to the employee. Employers may not require extra or additional documentation beyond what is required for Form I–9 completion. Further, employees who receive an initial mismatch via E-Verify must be given an opportunity to challenge the mismatch, and employers are prohibited from taking adverse action against such employees based on the initial mismatch unless and until E-Verify returns a final nonconfirmation. The

Hotline accepts calls in multiple languages. Additional information is available on the OSC Web site at *http://www.justice.gov/crt/osc/*.

Note Regarding Federal, State, and Local Government Agencies (Such as Departments of Motor Vehicles)

State and local government agencies are permitted to create their own guidelines when granting certain benefits, such as a driver's license or an identification card. Each state may have different laws, requirements, and determinations about what documents you need to provide to prove eligibility for certain benefits. If you are applying for a state or local government benefit, you may need to provide the state or local government agency with documents that show you are a TPS beneficiary and/or show you are authorized to work based on TPS. Examples are:

(1) Your expired EAD that has been automatically extended, or your EAD that has a valid expiration date;

(2) A copy of this **Federal Register** notice if your EAD is automatically extended under this notice;

(3) A copy of your Application for Temporary Protected Status, Form I–821 Receipt Notice (Form I–797) for this re-registration;

(4) A copy of your past or current Form I–821 Approval Notice (Form I–797), if you receive one from USCIS; and

(5) If there is an automatic extension of work authorization, a copy of the fact sheet from the USCIS TPS Web site that provides information on the automatic extension.

Check with the state or local agency regarding which document(s) the agency will accept.

Some benefit-granting agencies use the USCIS Systematic Alien Verification for Entitlements Program (SAVE) to verify the current immigration status of applicants for public benefits. If such an agency has denied your application based solely or in part on a SAVE response following completion of all required SAVE verification steps, the agency must offer you the opportunity to appeal the decision in accordance with the agency's procedures. If the agency has completed all SAVE verification and you do not believe the response is correct, you may make an Info Pass appointment for an in-person interview at a local USCIS office. Detailed information on how to make corrections, make an appointment, or submit a written request can be found at the SAVE Web site at *http://www.uscis.gov/save*, then by choosing "How to Correct Your Records" from the menu on the right.

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5526–N–01]

Public Housing Assessment System (PHAS): Proposed Physical Condition Interim Scoring Notice

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: This notice provides additional information to public housing agencies (PHAs) and members of the public about HUD's process for issuing scores under the Physical Condition Indicator of the PHAS under the PHAS Physical Condition Scoring Process notice published on February 23, 2011. This notice provides information to the public about the implementation of a point loss cap in the scoring process. This notice also proposes changes to definitions in the Dictionary of Deficiency Definitions that is an appendix to the PHAS notice on the physical condition scoring process. These proposed changes would affect the physical condition inspections process for both multifamily and public housing properties. This notice also provides information about the updated inspection software that will be used by inspector when conducting inspection. The changes made in this notice are discussed in the Supplementary Information section below.

DATES: Comment Due Date: November 14, 2011.

ADDRESSES: Interested persons are invited to submit comments on this notice and the revised Definitions to be included in the Dictionary of Deficiency Definitions, attached to this notice as an appendix, to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov*. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service, toll-free, at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Claudia J. Yarus, Department of Housing and Urban Development, Office of Public and Indian Housing, Real Estate Assessment Center (REAC), 550 12th Street, SW., Suite 100, Washington, DC 20410 at 202–475–8830 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Purpose of This Notice

The purpose of this notice is to describe the physical condition scoring process for the PHAS physical condition indicator. This notice is different from,

and supersedes, the February 23, 2011 notice in that it: (1) Describes the change to the scoring process through the implementation of a point loss cap; (2) proposes changes to certain definitions in the Dictionary of Deficiency Definitions; and (3) describes the updated inspection software that will be used by inspectors when conducting REAC inspections of HUD insured and assisted properties.

II. Background

1. Initial Changes to the Dictionary of Deficiency Definitions

Since 2001, when the conference report on that fiscal year's appropriations bill (H.R. Conf. Rep. 106–988) directed HUD to "assess the accuracy and effectiveness of the PHAS system and to take whatever remedial steps may be needed," and to perform a statistically valid test of PHAS, HUD has engaged in an extensive effort to ensure that the dictionary of deficiency definitions were responsive to industry concerns. HUD engaged a contractor, the Louis Berger group (the contractor) to perform the requested study; the contractor produced a final report in June, 2001, identifying 47 definitions in the Dictionary of Deficiency Definitions, published as Appendix 2 to the Public Housing Assessment System Physical Condition Scoring Process notice published on November 26, 2001 (66 FR 59084) and recommended modifications and minor changes to each.

From 2001 to 2002, HUD and the contractor met with representatives from the multifamily industry, the public housing industry, and HUD's own multifamily and public housing staff to conduct informal discussions on proposed changes to various definitions in the Dictionary of Deficiency Definitions. It was emphasized to the participants that HUD was not seeking their opinions as a group or any official recommendations. Informed by these discussions, HUD then drafted the revisions to the definitions it proposed in a 2004 **Federal Register** Notice for public comment (see 69 FR 12474, March 16, 2004).

The definitions for which changes were proposed were those that had been identified as causing the greatest inconsistency among contract inspectors. These proposed changes would affect the physical condition inspection process for both multifamily and public housing properties.

2. System Development and Changes to PASS and the Dictionary of Deficiency Definitions

From 2004 to the present, HUD conducted an ongoing deliberative process to develop an updated physical inspection system, including an updated electronic system, that would incorporate the proposed changes to the Dictionary of Deficiency Definitions as well as an additional equity principle. To that end, HUD utilized the information obtained from the earlier consultations with industry groups. Accordingly, the system development process began with the incorporation of the revised Dictionary of Definitions, which the industry and other HUD stakeholders supported. The process was furthered by repeated informal industry contacts from 2004 to the present, which demonstrated to HUD that these changes, while proposed in 2004, are still desired by the industry and still address key areas of interest for the major actors. This repeated confirmation has led HUD to conclude that the newly developed system should incorporate the revised Dictionary of Definitions, as well as an additional principle into the scoring methodology and an updated inspection software tool.

3. Point Loss Cap

One of the major changes made in this notice is the addition of a point loss cap. With the point loss cap, the scoring methodology would take into account the disproportionate effect on scoring that a single deficiency can have when there are relatively few buildings or units that are inspected in a project. Until this point, the scoring methodology has not accounted for this disproportionate effect in the physical inspections scores. This is an issue that has been the subject of repeated comments. These comments have been made consistently in the appeals of PASS scores under the original PHAS Rule, in informal communications with industry, and during industry conferences and meetings in which HUD staff are represented and they continue to be made by the industry members. In order to lessen this impact, HUD developed a mechanism to cap the number of points that would be deducted from the project score for any one deficiency.

This mechanism, a point loss cap set at the inspectable area level, was developed in an effort to more precisely account for the impact of a single deficiency on a property score. These long standing comments on this component of the current scoring methodology, along with HUD's internal analysis of the impact of the proposed change in scoring, has led to the decision by HUD to add a point loss cap to the physical inspection system.

4. DCD 4.0 Inspection Software

The DCD 4.0 is an updated inspection software that will replace the aging DCD 2.3.3 software originally developed in 1997. In addition to taking advantage of advances in technology, the core functionality of the inspection software has been modified to improve data collection. It employs a decision tree model that replaces the selection-based model of recording observed deficiencies. The inspection protocol remains unchanged, but the overall system includes the changes made to the Dictionary of Deficiency Definitions and the inclusion of a point loss cap determined at the inspectable area level.

Incorporation of the revised definitions and point loss cap along with the DCD 4.0 Inspection Software has led to an overall physical inspection system broader in scope than what was proposed in the 2004 **Federal Register** Notice. As a result, HUD is once again publishing proposed revisions to the Dictionary of Definitions for comment along with the new proposed change of a point loss cap. The proposed revisions to the Dictionary of Deficiency Definitions are included as Appendix 1 to this notice.

III. The Revised Physical Inspection Scoring Process

Substantive revisions to the physical scoring process proposed in this notice include:

- A definition is added for "point loss cap" following the definition for "normalized sub-area weight."
- Under section 3, "equity principles," a paragraph is added on the point loss cap.
- Under section 5, "health and safety deficiencies," language is added reflecting both remediation and action to abate the deficiency; language relating to a deadline for transmittal of the deficiency report is removed.
- Under the same section, it is specified that if there are smoke detector deficiencies, the physical inspection score will include an asterisk.
- Under section 7, "scoring using weighted averages," language is added related to the point loss cap.
- Under section 8, "essential weights and levels," the point loss cap is added to the bulleted list.
- Under section 9, the title is revised to "normalized area weights" and the description of the calculation is revised.

• Under section 12, the examples of physical condition score calculations are substantially revised.

• Section 13, "computing PHAS physical inspection scores," is revised.

• The examples of sampling weights for buildings in section 14 are revised.

The PHAS physical inspection generates comprehensive results, including physical inspection scores reported at the project level; area level scores for each of the five physical inspection areas, as applicable; and observations of deficiencies recorded electronically by the inspector at the time of the inspection.

1. Definitions

The following are the definitions of the terms used in the physical condition scoring process:

Criticality means one of five levels that reflect the relative importance of the deficiencies for an inspectable item. Appendix 1 lists all deficiencies with their designated criticality levels, which vary from 1 to 5, with 5 being the most critical. Based on the criticality level, each deficiency has an assigned value that is used in scoring. Those values are as follows:

Criticality	Level	Value
Critical	5	5.00
Very Important	4	3.00
Important	3	2.25
Contributes	2	1.25
Slight Contribution	1	0.50

Based on the importance of the deficiency as reflected by its criticality value, points are deducted from the project score. For example, a clogged drain in the kitchen is more critical than a damaged surface on a countertop. Therefore, more points will be deducted for a clogged drain than for a damaged surface.

Deficiencies refer to specific problems that are recorded for inspectable items, such as a hole in a wall or a damaged refrigerator in the kitchen.

Inspectable area means any of the five major components of the project: site, building exteriors, building systems, common areas, and dwelling units.

Inspectable items refer to walls, kitchens, bathrooms, and other features that are inspected in an inspectable area. The number of inspectable items varies for each inspectable area, from 8 to 17. Weights are assigned to each item to reflect their relative importance and are shown in the Item Weights and Criticality Levels tables. The tables refer to the weight of each item as the nominal item weight, which is also known as the amenity weight.

Normalized area weight represents weights used with area scores to calculate project-level scores. The weights are adjusted to reflect the inspectable items actually present at the time of the inspection. These weights are proportional, as follows:

• For dwelling units, the area score is the weighted average of sub-area scores for each unit, weighted by the total of item weights present for inspection in each unit, which is referred to as the amenity weight.

• For common areas, the area score is the weighted average of sub-area common area scores weighted by the total weights for items available for inspection (or amenity weight) in each residential building common area or common building. Common buildings refer to any inspectable building that contains no dwelling units. All common buildings are inspected.

• For building exteriors or building systems, the area scores are weighted averages of sub-area scores.

• For sites, the area score is calculated as follows: (1) The amenity weights found on a site, (2) minus deductions for deficiencies, and (3) normalized to a 100-point scale.

Normalized sub-area weight means the weight used with sub-area scores to compute an inspectable area score. These weights are proportional:

• For dwelling units, the item weight of amenities available in the unit at the time of inspection is the amenity weight.

• For common areas, the common area amenity weight is divided by a building's probability of being selected for inspection. All residential buildings with common areas may not be selected for inspection; however, all buildings with common areas are used to determine the amenity weight.

• For building exterior and building systems, the building exterior or building system amenity weight is multiplied by the building's size (number of units) and then divided by its probability of being selected for inspection.

• For the site, there is no sub-area score. For each project, there is a single site.

Note that dividing by a building's probability of being selected for inspection is the same as multiplying by the probability weight since the probability weight is 1 divided by the probability of being selected for inspection.

Point loss cap is the maximum number of points that a single deficiency can count against the overall property score. The point loss cap for each inspectable area is:

Inspectable area	Maximum point deduction for a single deficiency
Site	7.5
Building Exterior	10.0
Building System	10.0
Common Areas	10.0
Dwelling Units	5.0

Project is used synonymously with the term "property."

Severity means one of three levels that reflect the extent of damage associated with each deficiency, with values assigned as follows:

Severity level	Value
3	1.00
2	0.50
1	0.25

The Item Weights and Criticality Levels tables show the severity levels that are possible for each deficiency. Based on the severity of each deficiency, the score is reduced. Points deducted are calculated by multiplying the item weight by the values for criticality and severity, as described below. For specific definitions of each severity level, see the Dictionary of Deficiency Definitions.

Score means a number between 0 and 100 that reflects the physical condition of a project, inspectable area, or sub-area. A property score includes both an alphabetical and a numerical component. The number represents an overall score for the basic physical condition of a property, including points deducted for health and safety deficiencies other than those associated with smoke detectors. The letter code specifically indicates whether health and safety deficiencies were detected, as shown in the chart below:

Physical inspection score alphanumeric codes	No health and safety deficiencies	Health and safety deficiencies			
		Non-life threatening (NLT)	Life threatening (LT)/exigent health and safety (EHS)	Fire safety	
				No smoke detector problems	Smoke detector problems
a	X			X	
a*	X				X
b		X		X	
b*		X			X
c			X	X	
c*			X		X

To record a health or safety problem, a letter is added to the project score (a, b, or c) and to note that one or more smoke detectors are inoperable or missing an asterisk (*) is added to the project score. The project score for properties with LT deficiencies will have a "c" whether or not there also are NLT deficiencies.

Sub-area means an area that will be inspected for all inspectable areas except the site. For example, the building exterior for building "2" is a sub-area of the building exterior area. Likewise, unit "5" would be a sub-area of the dwelling units area. Each inspectable area for each building in a property is treated as a sub-area.

2. Scoring Protocol

To generate accurate scores, the inspection protocol includes a determination of the appropriate relative weights of the various components of the inspection; that is, which components are the most important, the next most important, and so on. For example, in the building exterior area, a blocked or damaged fire escape is more important than a cracked window, which is more important than a broken light fixture. The Item Weights and Criticality Levels tables provide the nominal weight of observable deficiencies by inspectable item for each area/sub-area. The Dictionary of Deficiency Definitions provides a definition for the severity of each deficiency in each area/sub-area.

3. Equity Principles

In addition to determining the appropriate relative weights, consideration is also given to several issues concerning equity between properties so that scores fairly assess all types of properties:

Proportionality. The scoring methodology includes an important control that does not allow any sub-area scores to be negative. If a sub-area, such as the building exterior for a given building, has so many deficiencies that the sub-area score would be negative, the score is set to zero. This control mechanism ensures that no single building or dwelling unit can affect the overall score more than its proportionate share of the whole.

Configuration of project. The scoring methodology takes into account different numbers of units in buildings. To fairly score projects with different numbers of units in buildings, the area scores are calculated for building exteriors and systems by using weighted averages of the sub-area scores, where the weights are based on the number of units in each building and on the building's probability of being selected for inspection. In addition, the calculation for common areas includes the amenities existing in the residential common areas and common buildings at the time of inspection.

Differences between projects. The scoring methodology also takes into account that projects have different features and amenities. To ensure that the overall score reflects only items that are present to be inspected, weights to calculate area and project scores are adjusted depending on how many items are actually there to be inspected.

Point loss cap. The scoring methodology further takes into account that a single deficiency can have disproportionate effects on scoring when there are relatively few buildings or units that are inspected in a project. To mitigate any disproportionate impact, the number of points deducted from the project score for any one deficiency is capped. Point loss caps are set at the inspectable area level.

4. Deficiency Definitions

During a physical inspection of a project, the inspector looks for deficiencies for each inspectable item within the inspectable areas, such as the walls (the inspectable item) of a dwelling unit (the inspectable area). Based on the observed condition, the Dictionary of Deficiency Definitions defines up to the three levels of severity for each deficiency: Level 1 (minor), Level 2 (major), and Level 3 (severe). The associated values are shown in the definition of "severity" in Section V.1. A specific criticality level, with associated values as shown in that chart, is also assigned to each deficiency. The criticality level reflects the importance of the deficiency relative to all other possible observable deficiencies for the inspectable area.

5. Health and Safety Deficiencies

The UPCS physical inspection emphasizes health and safety (H&S) deficiencies because of their crucial impact on the well-being of residents. A subset of H&S deficiencies is exigent health and safety (EHS) deficiencies. These are life threatening (LT) and require immediate action or remedy. EHS deficiencies can substantially reduce the overall project score. As noted in the definition for the word "score" in the Definitions section, all H&S deficiencies are highlighted by the addition of a letter to the numeric score. The Item Weights and Criticality Levels tables list all H&S deficiencies with an LT designation for those that are EHS deficiencies and an NLT designation for those that are non-life threatening. The LT and NLT designations apply only to severity level 3 deficiencies.

To ensure prompt correction, remedy or action to abate of H&S deficiencies, the inspector gives the project representative a deficiency report identifying every observed EHS deficiency before the inspector leaves the site. The project representative acknowledges receipt of the deficiency report by signature. HUD makes available to all PHAs an inspection report that includes information about all of the H&S deficiencies recorded by the inspector. The report shows:

- The number of H&S deficiencies (EHS and NLT) that the inspector observed;
- All observed smoke detector deficiencies; and
- A projection of the total number of H&S problems that the inspector potentially would see in an inspection of all buildings and all units.

If there are smoke detector deficiencies, the physical conditions score will include an asterisk. However,

problems with smoke detectors do not currently affect the overall score. When there is an asterisk indicating that the project has at least one smoke detector deficiency, that part of the score may be identified as "risk;" for example, "93a, risk" for 93a*, and "71c, risk" for 71c*. There are six distinct letter grade combinations based on the H&S deficiencies and smoke detector deficiencies observed: a, a*, b, b*, c, and c*. For example:

- A score of 90c* means that the project contains at least one EHS deficiency to be corrected, including at least one smoke detector deficiency, but is otherwise in excellent condition.
- A score of 40b* means the project is in poor condition, has at least one non-life threatening deficiency, and has at least one missing or inoperable smoke detector.
- A score of 55a means that the project is in poor condition, even though there are no H&S deficiencies.
- A project in excellent physical condition with no H&S deficiencies would have a score of 90a to 100a.

6. Scoring Process Elements

The physical condition scoring process is based on three elements within each project: (1) Five inspectable areas (site, exterior, systems, common areas, and dwelling units); (2) inspectable items in each inspectable area; and (3) observed deficiencies.

7. Scoring Using Weighted Averages

The score for a property is the weighted average of the five inspectable area scores, where area weights are adjusted to account for all of the inspectable items that are actually present to be inspected. In turn, area scores are calculated by using weighted averages of sub-area scores (*e.g.*, building area scores for a single building or unit scores for a single unit) for all sub-areas within an area.

For all areas except the site, normalized sub-area weights are determined using the size of sub-areas, the items available for inspection, and the sub-area's probability of selection for inspection. Sub-area scores are determined by deducting points for deficiencies, including H&S deficiencies, based on the importance (weight) of the item, the criticality of the deficiency, and the severity of the deficiency. The maximum deduction for a single deficiency cannot exceed the point cap for the inspectable area where the deficiency is observed and a sub-area score cannot be less than zero. Also, points will be deducted only for one deficiency of the same kind within a sub-area. For example, if multiple deficiencies for broken windows are recorded, only the most severe deficiency observed (or one of the most severe, if there are multiple deficiencies with the same level of severity) will result in a point deduction.

8. Essential Weights and Levels

The process of scoring a project's physical condition depends on the weights, levels, and associated values of the following quantities:

- Weights for the 5 inspectable areas (site, building exteriors, building systems, common areas, and dwelling units).
- Weights for inspectable items within inspectable areas (8 to 17 per area).
- Criticality levels (critical, very important, important, contributes, and slight contribution) plus their associated values for deficiencies within areas inspected.
- Severity levels (3, 2, and 1) and their associated values for deficiencies.
- Health and safety deductions (exigent/fire safety and non-life threatening for all inspectable areas).
- Point loss cap, defined at the inspectable area level.

9. Normalized Area Weights

Area weights are used to obtain a weighted average of area scores. A project's overall physical condition score is a weighted average of all inspectable area scores. The nominal weights are:

Inspectable area	Weight (percent)
Site	15
Building Exterior	15
Building Systems	20
Common Areas	15
Dwelling Units	35

These weights are assigned for all inspections when all inspectable items are present for each area and for each building and unit. All of the inspectable items may not be present in every inspectable area. When items are missing in an area, the area weights are modified to reflect the missing items so that within that area they will add up to 100 percent. Area weights are recalculated when some inspectable items are missing in one or more area(s).

Although rare, it is possible that an inspectable area could have no inspectable items available; for example, there could be no common areas in the inspected residential buildings and no common buildings. In this case, the weight of the "common areas" would be zero percent and its original 15 percent weight would be equitably redistributed to the other inspectable areas. The 15 percent is redistributed by totaling the weights of other inspectable areas (15 + 15 + 20 + 35 = 85) and dividing the weights of each by that amount (0.85, which is 85% expressed as a decimal). The modified weights are 17.6 percent, 17.6 percent and 23.5 percent, zero percent, and 41.2 percent for site, building exterior, building systems, common areas, and units, respectively, and they add up to 100 percent.

10. Area and Sub-Area Scores

For inspectable areas with sub-areas (all areas except sites), the inspectable area score is a weighted average of the sub-area scores within that area. The scoring protocol determines the amenity weight for the site and each sub-area as noted in Section VI.1 under the definition for normalized sub-area weight. For example, a property with no fencing or gates in the inspectable area of the site would have an amenity weight of 90 percent or 0.9 (100 percent minus 10 percent for lack of fencing and gates), and a single dwelling unit with all items available for inspection, except a call-for-aid would have an amenity weight of 0.98 or 98 percent (100 percent minus 2 percent for lack of call-for-aid). A call-for-aid is a system designed to provide elderly residents the opportunity to call for help in the event of an emergency.

The amenity weight excludes all health and safety items. Each deficiency as weighted and normalized are subtracted from the sub-area or site-weighted amenity score. Sub-area and site area scores are further reduced for any observed health and safety deficiencies. These deductions are taken at the site, building, or unit level. At this point, a control is applied to prevent a negative site, building, or unit score. The control ensures that no single building or unit can affect an area score more than its weighted share.

11. Overall Project Score

The overall project score is the weighted average of the five inspectable area scores, with the five areas weighted by their normalized weights. Normalized area weights reflect both the initial weights and the relative weights between areas of inspectable items actually present. For reporting purposes, the number of possible points is the normalized area weight adjusted by multiplying by 100 so that the possible points for the five areas add up to 100. In the Physical Inspection Report for each project that is sent to the PHA, the following items are listed:

- Normalized weights as the "possible points" by area;

• The area scores, taking into account the points deducted for observed deficiencies;

• The deductions for H&S for each inspectable area; and

• The overall project score.

The Physical Inspection Report allows the PHA and the project manager to see the magnitude of the points lost by inspectable area and the impact on the score of the H&S deficiencies.

12. Examples of Physical Condition Score Calculations

The physical inspection scoring is deficiency based. All projects start with 100 points. Each deficiency observed reduces the score by an amount dependent on the importance and severity of the deficiency, the number of buildings and units inspected, the inspectable items actually present to be inspected, and the relative weights between inspectable items and inspectable areas.

The calculation of a physical condition score is illustrated in the examples provided below. The examples go through a number of interim stages in calculating the score, illustrating how sub-area scores are calculated for a single project, how the sub-area scores are rolled up into area scores, how the point cap is applied, and how area scores are combined to calculate the overall project score. One particular deficiency, missing/damaged/expired fire extinguishers, is carried through the example.

As will be seen, the deduction starts as a percent of the sub-area. Then the area score is decreased considerably in the final overall project score since it is averaged across other sub-areas (building systems in the example) and then averaged across the five inspectable areas. Last, as applicable, the points deducted due to the observance of a particular deficiency are reduced by the application of the point loss cap. Although interim results in the examples are rounded to one decimal, only the final results are rounded for actual calculations.

Following this section, another example is given specifically for public housing projects to show how project scores are rolled up into the PHAS physical indicator score for the PHA as a whole.

Example #1. This example illustrates how the score for a sub-area of building systems is calculated based on the following features.

Consider a project for which the five inspectable areas are present and during the inspection of a residential building with 28 units missing/damaged/expired fire extinguishers are observed. This deficiency has a severity level of 3, which has a severity weight of 1.00 (see Item 1 of this section); a criticality level of 5, which has a criticality weight of 5 (see Item 1 of this section); and an item weight of 15.5. The amount of the points deducted is the item weight (15.5), multiplied by the criticality weight (5), multiplied by the severity weight (1), which equals 77.5.

If this sub-area has all inspectable items, the amenity weight for the sub-area adds to 100%. If missing/damaged/expired fire extinguishers is the only deficiency observed, the initial proportionate score for this sub-area (building systems in building one) is the amenity score minus the deficiency points, normalized to a 100-point basis. In this instance the initial proportionate sub-area score is $100 - 77.5 = 22.5 \times (100 \div 100) = 22.5$. Because the point deduction for the missing/damaged/expired fire extinguishers is 77.5, this deficiency accounts for 77.5% of the sub-area score. Additional deficiencies or H&S deficiencies would be calculated in the same manner and further decrease the sub-area score, and if the result is less than zero (a negative number) the score is set to zero.

Element	Associated value
Amenity Score	100.0
Deficiency points	77.5
Calculation for the initial proportionate score.	100.00 − 77.5 = 22.5
Normalizing factor	100 ÷ 100 = 1
Normalized Initial sub-area score.	22.5 × 1 = 22.5

Example #2. This example illustrates how the building systems inspectable area score is calculated from the sub-area score. Consider a property with two buildings with the following characteristics:

• Building One (from example #1 above):

—28 units

—100 percent amenity weight for items that are present to be inspected in building systems

—Building systems sub-area score is 22.5 points

• Building Two:

—2 units

—62 percent amenity weight for items that are present to be inspected in the building's systems

—Building systems sub-area score is 100.0 points

The score for the building systems area is the weighted average of the individual scores for each building's systems. Each building systems score is weighted by the number of units and the percent of the weight for items present to be inspected in the building systems inspectable area.

The building systems area score is determined as follows. First, the unit weighted average for each building is computed by multiplying the number of units in the building by the amenity weight for that building. The unit weighted average for each building then is divided by the total of the building weights for all buildings in the property to determine the proportion of building weight for each building. Multiplying the proportion of building weight by the initial sub-area score for the building produces the building systems area score. The building systems area score for the property is the sum of the building systems area score for each building.

In this example, the buildings systems area score for the property is 25.7.

Building	Number of units	×	Amenity weight	=	Unit weighted average
One	28		1.00		28.0
Two	2		.62		1.24
Total	30				29.24

Unit weighted average	+	Sum of building weights	=	Proportion of building weight
28.0		29.24		.958
1.24		29.24		.042
29.24				

Proportion of building weight	×	Initial sub-area score	=	Building systems area score
.958		22.5		21.5
.042		100.0		4.2
				25.7

As shown in the calculations above, the proportion of building weight allocated to building one is 95.8% (28.0 ÷ 29.24 = .958). A building systems area score of 25.7 indicates that the point deduction for the missing/damaged/expired fire extinguishers in building one is 74.2 points: The number of points deducted at the sub-area (from example #1) multiplied by the proportion of building weight allocated to building one, or 77.5 × .958 = 74.2.

Example #3. This example illustrates how the overall weighted average for the building systems area amenity weight is calculated. The unit weighted average of amenity weight for each building is computed by dividing the unit weighted average for the building (as calculated in example #2) by the total number of units in the property. Normalizing the unit weighted average of amenity weights for each building by multiplying by 100 results in the overall building systems weighted average amenity weight. In this example, the overall building systems weighted average amenity weight for the property is 97.4.

Building	Unit weighted average	÷	Total units in property	=	Unit weighted average of amenity weights	×	Normalized to a 100 point basis	=	Overall building systems weighted average amenity weight
One	28.0		30		.933		100		93.3
Two	1.24		30		.041		100		4.1
Total	29.24								97.4

Example #4. This example illustrates how the score for a property is calculated. Consider a property with the following characteristics. All of the values are presumed except for the values buildings systems which were calculated in the preceding examples.

- Site

—Score: 90 points
—67.5 percent weighted average amenity weight
—Nominal area weight: 15 percent

- Building Exteriors

—Score: 85 points
—100 percent weighted average amenity weight
—Nominal area weight: 15 percent

- Building Systems (from Examples 2 and 3)

—Score: 25.7 points
—97.4 percent weighted average amenity weight
—Nominal area weight: 20 percent

- Common Areas

—Score: 77 points
—20 percent weighted average amenity weight
—Nominal area weight: 15 percent

- Dwelling Units

—Score: 85 points
—94 weighted average amenity weight
—Nominal area weight: 35 percent

To calculate the property score, the adjusted area weights for all five inspectable areas are determined. The amenity weights for each of the five inspectable areas shown in the table below are all presumed, except for the amenity weight for building systems that was calculated in the three examples above.

The property score is determined as follows. The amenity weighted average is computed by multiplying the nominal area weight for the inspectable area (see Item 1 of this Section) by the amenity weight (presumed for the example). Next, the amenity weighted averages for the five inspectable areas are added to determine the total adjusted weight (80.5 in this example). to determine the maximum possible points for the inspectable area, each amenity weighted average is divided by the total adjusted weight and then multiplied by 100 to normalize the result. The sum of the five maximum inspectable area points is the total number of possible points for the property. In this example, the maximum possible points, 99.9, was rounded to 100.

Inspectable area	Nominal area weight	×	Amenity weight	=	Amenity weighted average	+	Total adjusted weight	×	Normalized to 100 point scale	=	Maximum possible area points
Site	15		0.675		10.1		80.5		100		12.5
Building Exterior	15		1.00		15.0		80.5		100		18.6
Building Systems	20		0.974		19.5		80.5		100		24.2
Common Areas	15		0.20		3.0		80.5		100		3.7
Dwelling Units	35		0.94		32.9		80.5		100		40.9
Total					80.5						100.0

Before the final property score is calculated, the points deducted for each deficiency are checked against the point loss cap in the applicable inspectable area to assure that no single deficiency results in the deduction of too many points. For the missing/damaged/expired fire extinguishers in building one, the points deducted under building systems will be the result of multiplying the number of building systems points deducted for the deficiency (74.2 as determined in example #2) by the proportion of total points allocated to the building systems inspectable area (.242 from the table above). In this example, the points deducted for this deficiency would be 74.2 × .242 = 18.0. Because the point loss cap for building systems is 10 points, this 18.0 point deduction exceeds the cap. Therefore, the total points deducted due to the missing/damaged/expired fire extinguishers deficiency in building one is reduced to 10.

There are four steps to implement the point deduction in the final score. First, the points

lost at the area level are set. For this property, the building systems points deducted due to missing/damaged/expired fire extinguishers is set by dividing the point cap (10) by the proportion of total points allocated to building systems (.242), or 10 ÷.242 = 41.3.

Second, the building systems sub-area weight for building one is set. This is determined by dividing the points lost at the area level (41.3) by the proportion of building weight for building one (.958), or 41.3 ÷ .958 = 43.1

Third, the building one building systems sub-area score is recalculated by summing the building systems deficiencies in building one. In example #1, the missing/damaged/expired fire extinguishers is the only deficiency in this sub-area. Therefore, the recalculated sub-area score for building one building systems is the amenity score (100) minus the building systems sub-area deficiency points (43.1), or 100 − 43.1 = 56.9.

The last step in the application of the point loss cap is the determination of the building systems area score for the property.

Building	Number of units	×	Amenity weight	=	Unit weighted average	+	Sum of the building weights	×	Initial proportionate score	=	Building systems area score
One	28		1.00		28.0		29.24		56.9		54.5
Two	2		0.62		1.24		29.24		100.0		4.2
Total	30				29.24						58.7

The recalculated building systems area score is 58.7 points, and will be rounded to 59. This area score is used to calculate the overall property score.

The nominal possible points for each inspectable area is multiplied by the amenity weight, divided by the total adjusted amenity weight, and normalized to a 100-point basis, in order to produce the possible points for the inspectable area. The property score is the sum of all weighted inspectable area scores for that property. The example below reflects how the missing/damaged/expired fire extinguishers deficiency from example #1 in building systems impacts the overall property score. In this example, the property score of 78.9 is rounded to 79.

Inspectable area	Area points	×	Area score	+	Normalized to a 100 point scale	=	Project weighted area scores
Site	12.5		90		100		11.2
Building Exterior	18.6		85		100		15.8
Building Systems	24.2		59		100		14.3
Common Areas	3.7		77		100		2.8
Dwelling Units	40.9		85		100		34.8
Total	100.0						78.9

13. Computing the PHAS Physical Inspection Score

The physical inspection score for the PHAS for a PHA is the weighted average of the PHA's individual project physical inspection scores, where the weights are the number of units in each project divided by the total number of units in all projects for the PHA.

Example: Project 1 has a score of 79 and has 30 units (from the example above)

Project 2 has a score of 88 and has 600 units.

The overall PHAS score is computed as follows:

Score = [79 × 30/(30+600)] + [88 × 600/(30+600)]

= 3.76 + 83.81

= 87.57 that rounds to an overall physical inspection score of 88.

14. Examples of Sampling Weights for Buildings

The determination of which buildings will be inspected is a two-phase process. In Phase 1 of the process, all common buildings and buildings that contain sampled dwelling units that will be inspected are included in the sampled buildings that will be inspected. (Dwelling units are sampled with equal probabilities at random from all buildings.) When all buildings in a project are not selected in the building sample through Phase 1, Phase 2 is used to increase the size of the building sample. In Phase 2, the additional buildings that are to be included in the sample are selected with equal probabilities so that the total residential building sample size is the lesser of either (1) the dwelling unit sample size, or (2) the number of residential buildings.

To illustrate the process for sampling buildings, two examples are provided below:

Example #1. This example illustrates a project with two buildings for which both buildings are sampled with certainty.

Building 1 has 10 dwelling units and building 2 has 20 dwelling units, for a total of 30 dwelling units. The target dwelling unit sample size for a project with 30 dwelling units is 15. Thus, the sampling ratio for this project is the total number of dwelling units divided by the unit sample size, or 30 ÷ 15 = 2. This means that every second dwelling unit will be selected. The number of residential buildings to be inspected is the minimum of 15 (the dwelling unit sample) and 2 (the number of residential buildings). Thus, 2 residential buildings will be inspected. Since both buildings have at least 2 dwelling units, both buildings are certain to be selected for inspection in Phase 1. Since all buildings were selected in Phase 1 of sampling, Phase 2 is not invoked. Both buildings will then have a selection probability of 1.00 and a sampling weight of 1.00.

Example #2. This example illustrates a project with some buildings selected in Phase 1, other buildings selected in Phase 2, and some buildings that are not selected at all.

The project is comprised of 22 residential buildings. Two of the buildings each have 10 dwelling units and the other 20 buildings are single-family dwelling units, for a total of 40 dwelling units (2 × 10) + 20 = 40. The target dwelling unit sample size for a project with 40 dwelling units is 16. The sampling ratio for this project is the total number of units divided by the unit sample size, or 40 ÷16 = 2.5. In accordance with the inspection protocol of inspecting the minimum of the dwelling unit sample (16) and the number of residential buildings (22), 16 of the residential buildings will be inspected for this project.

In Phase 1 of sampling, the two buildings with 10 dwelling units are selected with certainty since each building has more than 2.5 dwelling units. Each of the single-family buildings has a 1 ÷ 2.5 or 0.40 probability of selection in Phase 1.

Assume that both multi-unit buildings and eight of the single-family buildings (10 buildings in all) are selected in Phase 1. This leaves 12 single-family buildings available

for selection in Phase 2. Since 16 residential buildings will be inspected, the sample of 10 buildings selected in Phase 1 falls six buildings short of a full sample. Therefore, six buildings will be selected in Phase 2. Since Phase 2 sampling will select 6 of the 12 previously unselected buildings, each building not selected in Phase 1 will have a six in 12 (0.50) probability of selection in Phase 2.

The two multi-unit buildings each have a sampling probability calculated as follows:

Sampling probability = 1.00 + ((1.00 − 1.00) × 0.50) = 1.00. The sampling weight for these buildings is 1.

The single-family buildings each have a sampling probability calculated as follows:

Sampling probability = 0.40 + ((1.00 − 0.40) × 0.50) = 0.70. The sampling weight of selected single-family buildings is 1 + 0.70 = 1.43.

15. Accessibility Questions

HUD reviews particular elements during the physical inspection to determine possible indications of noncompliance with the Fair Housing Act (42 U.S.C. 3601–3619) and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). More specifically, during the physical inspection, the inspector will record if: (1) There is a wheelchair-accessible route to and from the main ground floor entrance of the buildings inspected; (2) the main entrance for every building inspected is at least 32 inches wide, measured between the door and the opposite door jamb; (3) there is an accessible route to all exterior common areas; and (4) for multi-story buildings that are inspected, the interior hallways to all inspected units and common areas are at least 36 inches wide. These items are recorded, but do not affect the score.

IV. Environmental Review

This notice provides operating instructions and procedures in connection with activity under the Public Housing Assessment System regulations at 24 DFR part 902 that have previously been subject to the required environmental review. Accordingly, under 24 CFR 50.19(c)(4), this notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Dated: September 26, 2011.

Sandra B. Henriquez,

Assistant Secretary for Public and Indian Housing.

Appendix I—Proposed Changes to Dictionary of Deficiency Definitions

Inspectable area	Inspectable item	Deficiency	Current 2.3 definition	Proposed definition	Change rationale
1. Building Exterior.	Walls	Damaged Chimneys.	The chimney, including the part that extends above the roofline, has separated from the wall or has cracks, spalling, missing pieces, or broken sections.	The chimney, including the part that extends above the roofline, has separated from the wall or has cracks, spalling, missing pieces, or broken sections **(including chimney caps)**.	This is a technical modification to include deficiencies for chimney caps as a Level 1 deficiency.
2. Building Exterior.	Windows		Window systems provide light, security, and exclusion of exterior noise, dust, heat, and cold. Frame materials include wood, aluminum, vinyl, *etc.* *Note:* This does not include windows that have defects noted from inspection from inside the unit.	Window systems provide light, security, and exclusion of exterior noise, dust, heat, and cold. Frame materials include wood, aluminum, vinyl, *etc.* **Note removed.**	This provision eliminates the confusion of inspecting some windows on exterior and other windows on interior. Windows are now inspected on the exterior and interior of inspected units. However, only interior observations are scored.
3. Building Exterior.	Windows	Security Bars Prevent Egress.	Exiting (egress) is severely limited or impossible, because security bars are damaged or improperly constructed or installed.	Exiting (egress) is severely limited or impossible, because security bars are damaged or improperly constructed or installed. **Security bars that are designed to open should open. If they do not open, record a deficiency.**	This is a clarification and definitional change that provides language regarding scoring a deficiency for security bars that open. This change also rewrites the Level 3 definition for clarity.
4. Building Exterior.	Windows	Missing/Deteriorated Caulking/Seals/Glazing Compound.	The caulking or glazing compound that resists weather is missing or deteriorated.	The caulking or glazing compound that resists weather is missing or deteriorated.	The definition for this deficiency is unchanged. Now interior observations only will be scored and the Level 2 deficiency will be lowered to a Level 1, since the deficiency only indicates superficial deterioration and not damage to the frame or structure itself.

Inspectable area	Inspectable item	Deficiency	Current 2.3 definition	Proposed definition	Change rationale
5. Building Exterior.	Windows	Peeling/Needs Paint.	Paint covering the window assembly or trim is cracking, flaking, or otherwise failing. -or- The window *Note:* This does not include windows that are not intended to be painted assembly or trim is not painted or is exposed to the elements.	Paint covering the window assembly or trim is cracking, flaking, or otherwise failing. -or- The window *Note:* This does not include windows that are not intended to be painted assembly or trim is not painted or is exposed to the elements.	The definition is unchanged but now only interior observations will be scored.
6. Building Systems.	Exhaust System	Roof Fans Inoperable.	The ventilation system to exhaust kitchen or bathroom air does not function.	The ventilation system to exhaust air **from building areas (such as kitchen, bathroom,** *etc.*) does not function. **Note:** 1. The inspector shall determine if the fan is event activated (example: fire, timer, *etc.*)—if so, there is no deficiency. 2. "Missing" only refers to the case where there was a fan to begin with. If a fan was not included in the design, do not record a deficiency for not having one.	This definitional clarification provides language to indicate that there is the possibility that the inspector may encounter exhaust fans in other building areas besides the kitchen or bathroom.
7. Building Systems.	HVAC		Portion of the building system that provides ability to heat or cool the air within the building. Includes equipment such as boilers, burners, furnaces, fuel supply, hot water and steam distribution, and associated piping, filters, and equipment. Also includes air handling equipment and associated ventilation ducting.	Portion of the building system that provides ability to heat or cool the air within the building. Includes equipment such as boilers, burners, furnaces, fuel supply, hot water and steam distribution, **centralized air conditioning systems**, and associated piping, filters, and equipment. Also includes air handling equipment and associated ventilation ducting.	This definitional clarification ensures that there is sufficient language added to clarify that the deficiency would include the functionality of the cooling system.
8. Building Systems.	HVAC	Boiler/Pump Leaks.	Water or steam is escaping from unit casing or system piping.	**Coolant**, water, or steam is escaping from unit casing **and/or pump packing**/system piping.	This change adds language to clarify that this deficiency also covers the use of non-water coolants in building HVAC systems.
9. Common Areas.	Ceiling	Bulging/Buckling	A ceiling is bowed, deflected, sagging, or is no longer aligned horizontally.	A ceiling is bowed, deflected, sagging, or is no longer aligned horizontally **to the extent that ceiilng failure is possibie**.	Phrase added to definition to indicate the imminent possibility of material or building component failure.
10. Common Areas.	Ceiling	Holes/Missing Tiles/Panels/ Cracks.	The ceiling surface has punctures that may or may not penetrate completely. -or- Panels or tiles are missing or damaged.	The ceiling surface has punctures that may or may not penetrate completely. -or- Panels or tiles are missing or damaged.	This is a technical modification that ensures the deficiency would include cracking in ceiling materials. Level 1 and Level 3 definitions were modified to include reference to cracks and the last section of Level 2 was deleted.

Inspectable area	Inspectable item	Deficiency	Current 2.3 definition	Proposed definition	Change rationale
11. Common Areas.	Ceiling	Mold	You see evidence of water infiltration, mold, or mildew that may have been caused by saturation or surface failure.	You see evidence of water infiltration, **or other moisture producing conditions causing** mold or mildew that may have been caused by saturation or surface failure.	This technical modification acknowledges that other possible sources of moisture beyond water infiltration contribute to mold and mildew growth. Further, the Level 2 definition is eliminated and there are now technical modifications to the Levels for this type of deficiency.
12. Common Areas.	Floors	Hard Floor Covering Missing Flooring/Tiles.	You see that flooring—terrazzo, hardwood, ceramic tile, or other flooring material—is missing.	You see that hard flooring—terrazzo, hardwood, ceramic tile, **sheet vinyl, vinyl tiles,** or other similar flooring material—is missing **section(s), or presents a tripping or cutting hazard, associated with but not limited to holes or delamination**.	This deficiency definition now will include a technical modification to specify additional types of flooring that should be considered and the various types of defects the inspector should observe.
13. Common Areas.	Floors	Soft Floor Covering Damaged.	You see damage to carpet tiles, wood, sheet vinyl, or other floor covering.	You see damaged and missing carpet.	This is a definitional change that simplifies the definition of the deficiency to focus on just carpeting.
14. Common Areas.	FHEO	Routes Obstructed or Inaccessible to Wheelchair.	Verify that routes to all outside common areas are accessible to wheelchairs (*i.e.,* there are curb cuts, ramps, and sufficient (36″) width).	Verify that **at least one route** to all outside common areas is accessible to wheelchairs (*i.e.*, there are curb cuts, ramps, and sufficient (36″) width).	This is a modification and clarification of the deficiency definition to reflect FHEO and other Federal requirements as they relate to handicapped accessibility.
15. Common Areas.	Floors	Rot/Deteriorated Subfloor.	The subfloor has decayed or is decaying.	The subfloor has decayed or is decaying. **Note:** 1. If there is any doubt, apply weight to detect noticeable deflection. 2. This type of defect typically occurs in kitchens and bathrooms.	This is a clarification aimed at simplifying the deficiency language for Level 2 and 3 deficiencies for decaying subfloors.
16. Common Areas.	HVAC	Inoperable	The heating, cooling, or ventilation system does not function. *Note:* 1. If the HVAC system is not functioning because it is not the right season, do not record this as a deficiency. 2. Statement may be validated by resident survey process.	The heating, cooling, or ventilation system does not function. **Note:** If the HVAC system does not operate because of seasonal conditions, do not record this as a deficiency.	This is a clarification of the deficiency language.
17. Common Areas.	HVAC	Noisy, Vibrating, Leaking.	The HVAC distribution components, including fans, are the source of abnormal noise, unusual vibrations, or leaks.	The HVAC distribution components, including fans, are the source of **unusual vibrations, leaks, or abnormal noise. Examples may include, but are not limited to: screeching, squealing, banging, shaking,** *etc.*	This definitional change allows for the inclusion of examples of deficiencies to help give the inspector a better understanding of specific types of damage to the property.
18. Common Areas.	Dishwasher/Garbage Disposal.	Inoperable	A dishwasher or garbage disposal, if provided, does not function as it should.	A dishwasher or garbage disposal, if provided, does not function.	This is a clarification of the definition.

Inspectable area	Inspectable item	Deficiency	Current 2.3 definition	Proposed definition	Change rationale
19. Common Areas.	Walls	Damaged	You see punctures in the wall surface that may or may not penetrate completely. Panels or tiles may be missing or damaged. *Note:* This does not include small holes from hanging pictures, *etc.*	You see cracks and/or punctures in the wall surface that may or may not penetrate completely. Panels or tiles may be missing or damaged. **Note:** 1. This does not include small holes from hanging pictures, *etc.* 2. Control joints/construction joints should not be recorded as a deficiency.	This change is a technical modification to the definition of a wall deficiency. The change makes it clear that cracks are considered a deficiency and that control/construction joints are not considered a deficiency.
20. Common Areas.	Range Hood/Exhaust Fans.	Excessive Grease/**Inoperable**.	The apparatus that draws out cooking exhaust does not function as it should.	The apparatus that draws out cooking exhaust does not function.	This clarification modifies the Level 1 definition to include other conditions that could impede air flow.
21. Common Areas.		Graffiti	You see crude inscriptions or drawings scratched, painted, or sprayed on a building surface, retaining wall.	You see crude inscriptions or drawings scratched, painted, or sprayed on an interior building surface at one location. An interior surface includes but is not limited to walls, doors, ceiling, and floors. A location is defined as one general area in a building such as one hallway in a 10 story building or one floor of a stairwell in a 5 story building. **Note:** There is a difference between art forms and graffiti. If there by design in accordance with proper authorization, do not consider full wall murals and other art forms as graffiti.	This definition change adds to the definition in order to specify the number and location of occurrences of graffiti as well as exclude certain types of sanctioned wall art.
22. Units	HVAC	General Rust/Corrosion.	You see a component of the system with deterioration from oxidation or corrosion of system parts.	You see a component of the system with deterioration from oxidation or corrosion of system parts. **Deterioration is defined as rust, and/or formations of metal oxides, flaking, or discoloration, or a pit or crevice.**	This change adds language that clearly and adequately defines the definition for deterioration.
23. Units	HVAC System	Inoperable	The heating, cooling, or ventilation system does not function.	The heating, cooling, or ventilation system does not function.	This is simply the addition of a word to the Level 3 deficiency to correct a grammatical error.
24.	Units	HVAC	Misaligned Chimney/Ventilation.	The exhaust system on a gas-fired unit is misaligned.	The exhaust system on either a gas, **oil fired, or coal** unit is misaligned. This is a definitional change that includes the oil fired and coal fired chimney units within the scope of this deficiency.
25. Units	Kitchen	Range Hood/Exhaust Fans—Excessive grease/inoperable.	The apparatus that draws out cooking exhaust does not function as it should.	The apparatus that draws out cooking exhaust does not function.	The definition is modified for a Level 1 deficiency to include other conditions that could impede air flow.

Inspectable area	Inspectable item	Deficiency	Current 2.3 definition	Proposed definition	Change rationale
26. Units	Call-for-Aid	Inoperable	The system does not function as it should.	The system does not function **Note:** Inspector should verify that the Call-for-Aid only alerts local entities (on-site) prior to testing.	This clarification informs the inspector on the sequencing of their inspection of the Call-for-Aid and removes an unnecessary and confusing phrase.
27. Site	Fencing and Gates.	Holes/Missing Sections/Damaged/Falling/Leaning.	A fence or gate is rusted, deteriorated, or uprooted which may threaten security, health, or safety. *Note:* Gates for swimming pool fences are covered in another section, "Common Areas—Pools and Related Structures".	A **non-security/non-safety** (example: Privacy/Decorative) fence or gate is rusted, deteriorated, uprooted, missing or contains holes. **Notes:** 1. Gates for swimming pool fences are covered in another section, "Site Fencing and Gates—Security". 2. Fences designed for Security/Safety are addressed under Security Fences: A security/safety (*i.e.:* Perimeter/Security) fence or gate is rusted, deteriorated, uprooted or missing such that it may threaten security, health or safety. A **security/safety** (*i.e.:* Perimeter/Security) fence or gate is rusted, deteriorated, uprooted or missing such that it may threaten security, health or safety.	This definitional change splits the fence deficiency definition into two distinct types of fences: non-security/non-safety fences and security/safety type fences or gates. This definition incorporates the deficiency definition entitled **'Fencing and Gates—Holes'**.
28. Site	Fencing and Gates.	Holes	There is an opening or penetration in any fence or gate designed to keep intruders out or children in. Look for holes that could allow animals to enter or could threaten the safety of children.	This definition no longer stands alone because it was included in the previous definition: Site Fencing and Gates—Holes/Missing Sections/Damaged/Falling/Leaning.	This previous stand-alone definition is incorporated into the deficiency definition entitled **'Fencing and Gates—Holes/Missing Sections/Damaged/Failing/Leaning'**.
29. Site	Grounds	Ponding/Site Drainage.	Water or ice has collected in a depression or on ground where ponding was not intended.	Water or ice has collected in a depression or on ground where ponding was not intended.	This definitional change specifies area parameters in Level 2 and 3 definitions.
30. Site	Parking Lots/ Driveways/ Roads.	Cracks	There are visible faults in the pavement: longitudinal, lateral, alligator, *etc.*	There are visible faults in the pavement: longitudinal, lateral, alligator, *etc.* The pavement sinks or rises because of the failure of sub base materials.	This definition is now incorporated into **a new definition entitled "Damaged Paving".**
31. Site	Parking Lots/ Driveways/ Roads.	Ponding	Water or ice has accumulated in a depression on an otherwise flat plane.	Water or ice has accumulated in a depression on an otherwise flat plane.	This definitional change removes a note considered obsolete and also more clearly states Level 2 and 3 definitions to more clearly specify water depth parameters.
32. Site	Parking Lots/ Driveways/ Roads.	Potholes/Loose Material	A hole caused by road surface failure -or- Loose, freestanding aggregate material caused by deterioration.	Definition consolidated into a new definition entitled "Damaged Paving".	This definition is now incorporated into **a new definition entitled "Damaged Paving".**

Inspectable area	Inspectable item	Deficiency	Current 2.3 definition	Proposed definition	Change rationale
33. Site	Parking Lots/ Driveways/ Roads.	Settlement/ Heaving	The pavement sinks or rises because of the failure of sub base materials. *Note:* If you see that water or ice has collected in the depression, record this under Ponding.	Definition consolidated into a new definition entitled "Damaged Paving".	This definition is now incorporated into **a new definition entitled "Damaged Paving".**
34. Site	Retaining Walls	Damaged/Falling/Leaning.	A retaining wall structure is deteriorated, damaged, falling, or leaning.	A retaining wall structure is deteriorated, damaged, falling, or leaning.	The Level 2 deficiency has been lowered to a Level 1 deficiency since it indicates only superficial deterioration to the retaining wall and not compromised structural integrity.
35. Site	Walkways and Steps.	Cracks/Settlement/Heaving.	Visible faults in the pavement: longitudinal, lateral, alligator, *etc.* -or- Pavement that sinks or rises because of the failure of sub base materials.	Visible faults in the pavement: longitudinal, lateral, alligator, *etc.* -or- Pavement that sinks or rises because of the failure of sub base materials.	The definition now no longer would include Note 4, since it was vague and did not always apply.
36. Health and Safety.	Air Quality	Mold and Mildew.	You see evidence of mold or mildew, especially in bathrooms and air outlets.	You see evidence of water infiltration or other moisture producing condition that causes mold, or mildew. **Note:** If the area has at least 1 square foot of mold or mildew, record it as a deficiency.	This is a definitional change that includes other causes of moisture such as water infiltration, which would ultimately lead to the growth of mold or mildew. It also clarifies the area and extent of damage necessary to record the deficiency.
37. Health and Safety.	Air Quality	Sewer Odor Detected.	You detect sewer odors that could pose a health risk if inhaled for prolonged periods.	You detect sewer odors.	This simplifies the definition to allow for any sewer odor to be considered a deficiency, instead of requiring the inspector to make a subjective judgment on whether the odor could pose a health risk.
38. Health and Safety.	Electrical Hazards.	Exposed Wires/ Open Panels.	You see exposed bare wires or openings in electrical panels. *Note:* If the accompanying authority has identified abandoned wiring, capped wires do not pose a risk and should not be recorded as a deficiency.	You see exposed bare wires or openings in electrical panels **Note:** 1. If the accompanying **property representative** has identified abandoned wiring, capped wires do not pose a risk and should not be recorded as a deficiency. They must be enclosed in a junction box as defined in Note 2 below. 2. If the capped wires are not properly enclosed in a junction box, record as a deficiency.	This clarification adds additional notes on conditions under which capped wires would be considered a deficiency and which can be accepted.
39. Health and Safety.	Emergency/Fire Exits.	Missing Exit Signs.	Exit signs that clearly identify all emergency exits are missing. -or- There is no illumination in the area of the sign.	Exit signs that clearly identify all emergency exits are missing. -or- There is no **adjacent or other internal** illumination in **operation on or near** the sign.	This clarification defines more explicitly what types of illumination exit signs ought to have (adjacent or internal) instead of the vague phrase 'area'.

Inspectable area	Inspectable item	Deficiency	Current 2.3 definition	Proposed definition	Change rationale
40. Health and Safety.	Flammable Materials.	Improperly Stored.	Flammable materials are improperly stored, causing the potential risk of fire or explosion.	Flammable or combustible materials are improperly stored near a heat or electrical source, causing the potential risk of fire or explosion. **Note:** Flammable or combustible materials may include but are not limited to Gasoline, Paint Thinners, Kerosene, Propane, paper, boxes, *etc.*	This clarification adds a Note to the definition to provide guidance on what may constitute flammable materials.
41. Health and Safety.	Hazards	Tripping	You see any physical defect that poses a tripping risk, generally in walkways or other traveled areas. *Note:* This does not include tripping hazards from elevators that do not level properly. For this deficiency, see Elevator—Tripping, under Health and Safety.	You see any physical defect that poses a tripping risk, generally in walkways or other traveled areas. **Typically, the defect must present at least a three-quarter inch deviation.** *Note:* This does not include tripping hazards from elevators that do not level properly. For this deficiency, see Elevator—Tripping, under Health and Safety.	This clarification adds language to provide a clear understanding of how large the deviation within a walkway must be to be considered a tripping hazard.

[FR Doc. 2011–26516 Filed 10–12–11; 8:45 am]
BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

Outer Continental Shelf Official Protraction Diagram, Lease Maps, and Supplemental Official Outer Continental Shelf Block Diagrams

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Availability of revised North American Datum of 1927 (NAD 27) Outer Continental Shelf (OCS) Official Protraction Diagram (OPD), Lease Maps, and Supplemental Official OCS Block Diagrams (SOBDs); Correction.

SUMMARY: BOEM (formerly the Bureau of Ocean Energy Management, Regulation and Enforcement) published a notice in the **Federal Register** (76 FR 54787) on September 2, 2011, entitled "OCS Official Protraction Diagram, Lease Maps, and Supplemental Official OCS Shelf Block Diagrams" that contained an error. This notice corrects the address of the Web site where the revised maps can be found.

FOR FURTHER INFORMATION CONTACT: Steven Textoris, Acting Chief, Leasing Division at (703) 787–1223 or via email at *Steven.Textoris@boem.gov.*

Correction: Copies of the revised OPD, Lease Maps, and SOBDs are available for download in *.pdf* format from *http://www.gomr.boem.gov/homepg/pubinfo/MapsandSpatialData.html.*

Dated: October 5, 2011.

L. Renee Orr,

Chief, Strategic Resources.

[FR Doc. 2011–26503 Filed 10–12–11; 8:45 am]
BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Request for Nominations of Members To Serve on the Bureau of Indian Education Advisory Board for Exceptional Children

AGENCY: Bureau of Indian Education, Interior.

ACTION: Notice of Request for Nominations.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C., Appendix 2, and the Individuals with Disabilities Education Improvement Act (IDEA) of 2004, (20 U.S.C. 1400 *et seq.*) the Bureau of Indian Education requests nominations of individuals to serve on the Advisory Board for Exceptional Children (Advisory Board). There are seven positions available. The Bureau of Indian Education (BIE) will consider nominations received in response to this Request for Nominations, as well as other sources. The **SUPPLEMENTARY INFORMATION** section for this notice provides Advisory Board and membership criteria.

DATES: Nominations must be received on or before November 14, 2011.

ADDRESSES: Please submit nominations to Sue Bement, Designated Federal Officer (DFO), Bureau of Indian Education, Albuquerque Service Center, Division of Performance and Accountability, P.O. Box 1088, Albuquerque, New Mexico 87103–1088.

FOR FURTHER INFORMATION CONTACT: Sue Bement, Education Specialist, telephone (505) 563–5274.

SUPPLEMENTARY INFORMATION: The Advisory Board was established in accordance with the Federal Advisory Committee Act, Public Law 92–463. The following provides information about the Advisory Board, the membership and the nomination process.

Objective and Duties

(a) Members of the Advisory Board will provide guidance, advice and recommendations with respect to special education and related services for children with disabilities in Bureau-funded schools in accordance with the requirements of IDEA of 2004.

(b) The Advisory Board will:

(1) Provide advice and recommendations for the coordination of services within the BIE and with other local, state and Federal agencies;

(2) Provide advice and recommendations on a broad range of policy issues dealing with the provision of educational services to American Indian children with disabilities;

(3) Serve as advocates for American Indian students with special education

needs by providing advice and recommendations regarding best practices, effective program coordination strategies, and recommendations for improved educational programming;

(4) Provide advice and recommendations for the preparation of information required to be submitted to the Secretary of Education under 20 U.S.C. 1411(h)(2)(D);

(5) Provide advice and recommend policies concerning effective inter/intra-agency collaboration, including modifications to regulations, and the elimination of barriers to inter/intra-agency programs and activities; and

(6) Report and direct all correspondence to the Assistant Secretary—Indian Affairs through the Director, BIE with a courtesy copy to the DFO.

Membership

(a) As required by 20 U.S.C. 1411(h)(6), the Advisory Board shall be composed of 15 individuals involved in or concerned with the education and provision of services to Indian infants, toddlers, children, and youth with disabilities. The Advisory Board composition will reflect a broad range of viewpoints and will include at least one (1) member representing each of the following interests: Indians with disabilities; teachers of children with disabilities; Indian parents or guardians of children with disabilities; service providers; state education officials; local education officials; state interagency coordinating Councils (for states having Indian reservations); Tribal representatives or Tribal organization representatives; and other members representing the various divisions and entities of the BIE.

(b) The Assistant Secretary—Indian Affairs may provide the Secretary of the Interior recommendations for the chairperson; however, the chairperson and other board members will be appointed by the Secretary of the Interior. Advisory Board members shall serve staggered terms of 2 or 3 years from the date of their appointment.

Miscellaneous

(a) Members of the Advisory Board will not receive compensation, but will be reimbursed for travel, including subsistence, and other necessary expenses incurred in the performance of their duties in the same manner as persons employed intermittently in Government Service under 5 U.S.C. 5703.

(b) A member may not participate in matters that will directly affect, or appear to affect, the financial interests of the member or the member's spouse or minor children, unless authorized by the appropriate ethics official. Compensation from employment does not constitute a financial interest of the member so long as the matter before the committee will not have a special or distinct effect on the member or the member's employer, other than as part of a class. The provisions of this paragraph do not affect any other statutory or regulatory ethical obligations to which a member may be subject.

(c) The Advisory Board meets at least twice a year, budget permitting, but additional meetings may be held as deemed necessary by the Assistant Secretary—Indian Affairs or DFO.

(d) All Advisory Board meetings are open to the public in accordance with the Federal Advisory Committee Act regulations.

Nomination Information

(a) Nominations are requested from individuals, organizations, and Federally recognized Tribes, as well as from state directors of special education (within the 23 states in which Bureau-funded schools are located) concerned with the education of Indian children with disabilities as described above.

(b) Nominees should have expertise and knowledge of the issues and/or needs of American Indian children with disabilities. Such knowledge and expertise are needed to provide advice and recommendations to the BIE regarding the needs of American Indian children with disabilities.

(c) A summary of the candidate's qualifications (résumé or curriculum vitae) must be submitted with the nomination application below. Nominees must have the ability to attend Advisory Board meetings, carry out Advisory Board assignments, participate in teleconferences, and work in groups.

(d) The Department of the Interior is committed to equal opportunity in the workplace and seeks diverse Advisory Board membership, which is bound by the Indian Preference Act of 1990 (25 U.S.C. 472).

Basis for Nominations

If you wish to nominate someone for appointment to the Advisory Board, please do not make the nomination until the person has been contacted and has agreed to have his/her name submitted to BIE for this purpose.

NOMINATION APPLICATION

(Please fill out this form completely and include a copy of your résumé or curriculum vitae.)

Note: Additional pages may be added for further explanation of any item. Reference the corresponding item number for which the additional explanation is made.

1. Full Name:			
2. Mailing Address:	3. City:	4. State:	5. Zip Code:
6. Primary Contact Phone Number: ( )	7. Secondary Contact Phone Number: ( )		
8. Place of Employment:			
9. Work Address:	10. City:	11. State:	12. Zip Code:
13. Employment Title:			
14. Work Telefax Number:	15. E-mail address:		

( )	

Note to Review Committee: Prior to submitting this nomination application, the above named individual must be contacted regarding appointment to the Advisory Board. Do not make a nomination until this person has been contacted and has agreed to have his/her name submitted to the Bureau of Indian Education.

16. If appointed, this person will represent one of the following categories (check all applicable):
____ Indian persons with disabilities
____ Teachers of children with disabilities
____ Indian parents or guardians of children with disabilities
____ Service providers
____ State Education Officials
____ Local Education Officials
____ State Interagency Coordinating Councils (for states having Indian reservations)
____ Tribal representatives or tribal organization representatives
____ Bureau employees concerned with the education of children with disabilities

17. What role would you recommend this nominee serve?
____ Advisory Board Chairperson
____ Advisory Board Member

18. Nominee's experience with BIE funded schools: (check all applicable)
____ BIE Day School
____ BIE Boarding School
____ Off-Reservation Boarding School
____ Tribal Contract School
____ Tribal Grant School
____ Cooperative School

19. List nominee's experiences related to the education of Indian infants, toddlers, children and youth with disabilities, in the past 10 years. Include time frames of experience or employment, position titles, location of employment or organization involvement and a brief description of duties. (Attach additional pages if necessary.)

20. Provide a list of current memberships or current affiliations with professional education organizations, particularly special education organizations. Identify organization offices held if applicable. (Attach additional pages if necessary.)

21. Identify special interests, activities, awards (professional, educational and community) related to the education of disabled Indian children (infants, toddlers, children and/or youth). (Attach additional pages if necessary.)

22. Nominee recommended by:

Name of Indian tribe, organization, individual (include position title) making nomination:		
Address of Indian tribe, organization, individual making nomination:		
City:	State:	Zip Code:
Signature of Authorizing Official:		
Date of Signature:	Phone (Area code + Number):	Telefax (Area code + Number):

Paperwork Reduction Act

This information collection has been assigned OMB Control No. 1076–0179, with an expiration of September 30, 2014. This information is being collected to select individuals to serve on a Federal advisory committee, the Advisory Board for Exceptional Children. Response to this request is required to obtain a benefit. You are not required to respond to this collection of information unless it displays a currently valid OMB control number. This information will be used to determine the eligibility and the ranking of the nominee. Public reporting burden for this form is estimated to average 1 hour per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments regarding the burden estimate or any other aspect of this form to Information Collection Clearance Officer—Indian Affairs, U.S. Department of the Interior, 1849 C Street, NW., MS–4141, Washington, DC 20240.

Dated: October 6, 2011.

Paul Tsosie,

Chief of Staff, Assistant Secretary—Indian Affairs.

[FR Doc. 2011–26448 Filed 10–12–11; 8:45 am]

BILLING CODE 4310–6W–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCOF00000–L18200000–XX0000]

Front Range Resource Advisory Council Meeting Cancellation

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting cancellation.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), notice is hereby given that the Front Range Resource Advisory Council meeting scheduled for October 19, 2011 at the BLM Royal Gorge Field Office, 3028 East Main Street, Canon City, CO has been cancelled. Notice of the meeting appeared in the **Federal Register** March 18, 2011.

DATES: The meeting was scheduled for October 19, 2011, 9:15 a.m. to 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Tina Brown, Front Range RAC Coordinator, BLM Colorado State Office, 2850 Youngfield St., Lakewood, CO 80215. Phone: (303) 239–3668. E-mail: *tbrown@blm.gov.*

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in the BLM Front Range District. Future meetings will be announced through a separate **Federal Register** notice.

Dated: October 5, 2011.

John Mehlhoff,

Acting State Director.

[FR Doc. 2011–26447 Filed 10–12–11; 8:45 am]

BILLING CODE 4310–JB–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–793]

Certain Flat Panel Display Devices, and Products Containing the Same; Notice of Commission Determination Not To Review an Initial Determination Granting Complainants' Unopposed Motion for Leave To Amend the Complaint and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ") initial determination ("ID") (Order No. 6) granting Complainant's unopposed motion for leave to amend the complaint and notice of investigation.

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3042. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on July 28, 2011, based on a complaint filed by AU Optronics Corporation of Hsinchu, Taiwan and AU Optronics Corporation America of Milpitas, California (collectively, "AU Optronics"). 76 FR 45296 (July 28, 2011). The complaint alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain flat panel display devices, and products containing the same by reason of infringement of various claims of United States Patent Nos. 6,281,955; 7,697,093; 7,286,192; 6,818,967; 7,199,854; and 7,663,729. The complaint named as respondents Samsung Electronics Co., Ltd. of Seoul, Korea; Samsung Electronics America, Inc. of Ridgefield Park, New Jersey; AT&T, Inc. of Dallas, Texas ("AT&T"); Best Buy Co., Inc. of Richfield, Minnesota ("Best Buy"); and BrandsMart USA, Inc. of Hollywood, Florida ("BrandsMart").

On August 31, 2011, AU Optronics filed an unopposed motion for leave to amend the complaint and notice of investigation to add as respondents: AT&T Mobility LLC of Atlanta, Georgia; Best Buy Stores, L.P. of Richfield, Minnesota; BestBuy.com, LLC of Eden Prairie, Minnesota; Best Buy Purchasing, LLC of Richfield, Minnesota; and Interbond Corporation of America of Fort Lauderdale, Florida, d/b/a BrandsMart U.S.A. (collectively, "New Respondents"), and to terminate the investigation as to AT&T, Best Buy, and BrandsMart.

On September 15, 2011, the ALJ issued the subject ID, granting the motion. The ALJ found that, pursuant to Commission Rule 210.14(b) (19 CFR 210.14(b)), good cause exists to amend the complaint and notice of investigation. None of the parties petitioned for review of the ID.

The Commission has determined not to review the ID. Accordingly, the New Respondents are added as respondents to this investigation and AT&T, Best Buy, and BrandsMart are terminated from the investigation.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

Issued: October 6, 2011.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–26445 Filed 10–12–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–809]

Certain Devices for Mobile Data Communication; Notice of Institution of Investigation; Institution of Investigation Pursuant to 19 U.S.C. 1337

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on August 31, 2011, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Openwave Systems Inc. of Redwood City, California. Supplements to the complaint were received on September 1, 16, and 19, 2011. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain devices for mobile data communication by reason of infringement of certain claims of U.S. Patent No. 6,233,608 ("the '608 patent"); U.S. Patent No. 6,289,212 ("the '212 patent"); U.S. Patent No. 6,405,037 ("the '037 patent"); U.S. Patent No. 6,430,409 ("the '409 patent"); and U.S. Patent No. 6,625,447 ("the '447 patent"). The complaint further alleges that an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: the Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2011).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on October 5, 2011, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain devices for mobile data communication that infringe one or more of claims 1, 3, 5–9, 33–36, and 47–50 of the '608 patent; claims 1–11, 14–24, 28–33, and 35–38 of the '212 patent; claims 1–14 and 27 of the '037 patent; claims 12–44 and 63–84 of the '409 patent; and claims 1–7, 9–19, and 21–29 of the '447 patent, and whether an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

Openwave Systems Inc., 2100 Seaport Boulevard, Redwood City, CA 94063.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Apple Inc., 1 Infinite Loop, Cupertino, CA 95014.

Research In Motion Ltd., 295 Phillip Street, Waterloo, Ontario N2L 3W8, Canada.

Research In Motion Corp., 122 West John Carpenter Parkway, Suite 430, Irving, TX 75039.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Acting Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

Issued: October 6, 2011.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–26444 Filed 10–12–11; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; ASTM International

Notice is hereby given that, on August 31, 2011, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), ASTM International ("ASTM") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ASTM has provided an updated list of current, ongoing ASTM standards activities originating between May 2011 and August 2011 designated as Work Items. A complete listing of ASTM Work Items, along with a brief description of each, is available at *http://www.astm.org.*

On September 15, 2004, ASTM filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 10, 2004 (69 FR 65226).

The last notification was filed with the Department on May 11, 2011. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 13, 2011 (76 FR 34252).

For additional information, please contact Thomas B. O'Brien, Jr., Vice President and General Counsel, at 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959, telephone # 610–832–9597.

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2011–26427 Filed 10–12–11; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; PXI Systems Alliance, Inc.

Notice is hereby given that, on September 6, 2011, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), PXI Systems Alliance, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Shikino High-Tech Co. Ltd., Toyama, Japan, has been added as a party to this venture. Also, DC to Light Limited, Bray, Wicklow, Ireland, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PXI Systems Alliance, Inc. intends to file additional written notifications disclosing all changes in membership.

On November 22, 2000, PXI Systems Alliance, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 8, 2001 (66 FR 13971).

The last notification was filed with the Department on June 29, 2001. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 9, 2011 (76 FR 48883).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2011–26428 Filed 10–12–11; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; IMS Global Learning Consortium, Inc.

Notice is hereby given that, on September 6, 2011, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), INS Global Learning Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Lightbox Education, Cheadle, United Kingdom; UMassOnline, The University of Massachusetts, Shrewsbury, MA; Escambia County School District, Pensacola, FL; Forsyth County Schools, Cumming, GA; Scientia Ltd., Cambridge, United Kingdom; and Wisconsin Virtual School, Tomahawk, WI, have been added as parties to this venture.

Also, Korea Cyber University (KCU), Seoul, Republic of Korea; Tele-Universite, Montreal, Quebec, Canada; Laureate Online Education, Baltimore, MD; and 4C Soft, Inc., Seocho-gu, Seoul, Republic of Korea, have withdrawn as parties to this venture. In addition, Compass Knowledge Group has changed its name to EmbanetCompass, Orlando, FL.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and IMS Global Learning Consortium, Inc. intends to file additional written notifications disclosing all changes in membership.

On April 7, 2000, IMS Global earning Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to Section 6(b) of the Act on September 13, 2000 (65 FR 55283).

The last notification was filed with the Department on May 9, 2011. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 13, 2011 (76 FR 34252).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2011–26426 Filed 10–12–11; 8:45 am]

BILLING CODE M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Network Centric Operations Industry Consortium, Inc.

Notice is hereby given that, on August 31, 2011, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Network Centric Operations Industry Consortium, Inc. ("NCOIC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, The Open Group, San Francisco, CA, has been added as a party to this venture.

Also, Israel Aerospace Industries, Ltd., Lod, Israel; Objective Interface Systems, Inc., Herndon, VA; International Data Links Society, San Diego, CA; Institute for Defense Analyses, Alexandria, VA; Center for Netcentric Product Research, East Hartford, CT; Vector Planning and Services, Inc. ("VPSI"), San Diego, CA; SYPAQ, Melbourne, Australia; and Telephonics Corporation, Farmingdale, NY, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NCOIC intends to file additional written notifications disclosing all changes in membership.

On November 19, 2004, NCOIC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 2, 2005 (70 FR 5486).

The last notification was filed with the Department on June 9, 2011. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on July 20, 2011 (76 FR 43347).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2011–26429 Filed 10–12–11; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Cooperative Research Group on Pre-Ignition Prevention Program

Notice is hereby given that, on September 13, 2011, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Southwest Research Institute—Cooperative Research Group on Pre-Ignition Prevention Programs ("P3") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) The identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: Ford Motor Company, Dearborn, MI; GM Global Technology Operations, Inc., Detroit, MI; Honda, Tochigi, Japan; Infineum, Linden, NJ; PCA Peugeot Citroen Automobiles, Veliz-Villacoublay Cedex, France; Suzuki Motor Corporation, Hamamatsu City, Japan; and Toyota, Aichi, Japan. The general area of P3's planned activity is to develop a fundamental understanding of the factors that lead to low speed pre-ignition (LSPI), and design a solution to eliminate it. Secondary objectives are to understand the effect of lube oil properties and their interaction with fuel on LSPI, understand how hardware design can be used to mitigate the effect of lube oil on LSPI, and develop fuel and/or lube specification and test methodology that allows P3 to identify fluids that improve LSPI performance. Membership in this group research project remains open, and P3 intends to file additional written

notification disclosing all changes in membership or planned activities.

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2011–26430 Filed 10–12–11; 8:45 am]

BILLING CODE 4410–11–M

LEGAL SERVICES CORPORATION

Sunshine Act Meetings; Notice

DATES: *Date And Time:* The Legal Services Corporation Board of Directors and its six committees will meet on October 16–18, 2011: On Sunday, October 16, the Governance & Performance Review Committee will meet at 4:45 p.m., Central Daylight Time. On Monday, October 17, the first meeting will commence at 1:15 p.m., Central Daylight Time. On Tuesday, October 18, the first meeting will commence at 10:15 a.m., Central Daylight Time.

Location

On Sunday, October 16, the Governance & Performance Review Committee meeting will be held at the Hyatt Regency Chicago Hotel, 151 East Wacker Drive, Chicago, Illinois 60601. On Tuesday, October 18, the Promotion & Provision Committee meeting will be held at the Chicago Bar Association, 321 South Plymouth Court, Chicago, Illinois 60604. The remaining Board and committee meetings on Monday, October 17 and Tuesday, October 18, will be held at the American Bar Association Headquarters, 321 N. Clark Street, Chicago, Illinois 60654.

Public Observation

Unless otherwise noted herein, the Board and all committee meetings will be open to public observation. Members of the public who wish to attend the Board and committee meetings on Monday, October 17 and Tuesday, October 18 at the American Bar Association Headquarters will need to identify themselves to building security upon entering the building. If you plan to attend any meeting(s) on the 17th or 18th, please contact Kathleen Connors, at *connorsk@lsc.gov* or 202–295–1617, at least 2 business days in advance of the meeting to place your name on the guest list.

Members of the public who are unable to attend in person but wish to listen to the public proceedings may do so by following the telephone call-in directions provided below but are asked to keep their telephones muted to eliminate background noises. From time to time the presiding Chair may solicit comments from the public.

Call-In Directions for Open Sessions

- Call toll-free number: 1–866–451–4981;
- When prompted, enter the following numeric pass code: 5907707348
- When connected to the call, please immediately "MUTE" your telephone.

Meeting Schedule:

*Sunday, October 16, 2011 Time.**

1. Governance and Performance Review Committee 4:45 p.m.

Monday, October 17, 2011

1. Operations & Regulations Committee 1:15 p.m.
2. Finance Committee** 2:15 p.m.
3. Institutional Advancement Committee** 3:00 p.m.
4. Audit Committee** 3:30 p.m.

Tuesday, October 18, 2011 Time.

1. Promotion & Provision for the Delivery of Legal Services Committee. 10:15 p.m.
2. Board of Directors. 1:45 p.m.

Status of Meeting

Open, except as noted below.

- Board of Directors—Open, except that, upon a vote of the Board of Directors, a portion of the meeting may be closed to the public to consider and act on the report of the Finance Committee regarding a technical correction to LSC's benefits plan document, to consider and act on the report of the Institutional Advancement Committee regarding reports by consultant candidates, to consider and act on briefings from management and LSC's Inspector General, and to consider and act on the General Counsel's report on potential and pending litigation involving LSC.***
- Finance Committee—Open, except that, upon a vote of the Board of Directors, a portion of the meeting may be closed to the public to consider and act on a technical correction to LSC's benefits plan document.
- Institutional Advancement Committee—Upon a vote of the Board of Directors, the meeting may be closed to the public to hear briefings by consultant candidates and to consider and act on selection of a consultant.****

A verbatim written transcript will be made of the closed session of the Board, Finance Committee and Institutional Advancement Committee meetings. However, the transcript of any portions of the closed session falling within the relevant provisions of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(6), (9) and (10), and the corresponding provisions of the Legal Services Corporation's implementing regulations, 45 CFR 1622.5(e), (g) and (h), will not be available for public inspection. A copy of the General Counsel's Certification that in his opinion the closing is authorized by law will be available upon request.

Matters To Be Considered

Sunday, October 16, 2011

Governance & Performance Review Committee

1. Approval of agenda.
2. Approval of minutes of the Committee's meeting of April 16, 2011.
3. Staff report on:
   - 2011 Board and Board Member self-evaluations.
   - 2011 Committee evaluations.
   - Update on research agenda.
   - Update on GAO recommendations.
4. Discussion of President, Officers, and IG evaluations for 2011.
5. Consider and act on other business.
6. Public Comment.
7. Consider and act on motion to adjourn meeting .

* * * * *

Monday, October 17, 2011

Operations & Regulations Committee

1. Approval of agenda.
2. Approval of minutes of the Committee's meeting of July 20, 2011.
3. Approval of minutes of the Committee's meeting of September 16, 2011.
4. Consider and act on potential initiation of rulemaking on enforcement mechanisms and sanctions:
   - Mattie Cohan, Office of Legal Affairs.
   - Laurie Tarantowicz, Office of Inspector General.
5. Staff report on relationship between LSC laws and regulations and LSC guidance.

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* Please note that all times in this notice are in the Central Daylight Time.

** The meeting of the Institutional Advancement Committee will run concurrently with the meetings of the Finance Committee and the Audit Committee.

*** Any portion of the closed session consisting solely of staff briefings does not fall within the Sunshine Act's definition of the term "meeting" and, therefore, the requirements of the Sunshine Act do not apply to such portion of the closed session. 5 U.S.C. 552b(a)(2) and (b). *See also* 45 CFR 1622.2 & 1622.3.

**** Any portion of the closed session consisting solely of briefings does not fall within the Sunshine Act's definition of the term "meeting" and, therefore, the requirements of the Sunshine Act do not apply to such portion of the closed session. 5 U.S.C. 552b(a)(2) and (b). *See also* 45 CFR 1622.2 & 1622.3.

• Mattie Cohan, Office of Legal Affairs.
6. Public comment.
7. Consider and act on other business.
8. Consider and act on adjournment of meeting.
* * * * *

Finance Committee

Open Session

1. Approval of agenda.
2. Approval of the minutes of the meeting of July 20, 2011.
3. Approval of the minutes of the meeting of August 1, 2011.
4. Approval of the minutes of the meeting of September 13, 2011.
5. Presentation on LSC's Financial Reports for period ending August 31, 2011:
• David Richardson, Treasurer/ Comptroller.
6. Staff report on status of FY 2013 appropriations process:
• John Constance, Office of Government Relations and Public Affairs
7. Consider and act on Resolution # 2011–0XX, Temporary Operating Budget for FY 2012:
• Presentation by David Richardson, Treasurer/Comptroller.
8. Public comment.
9. Consider and act on other business.

Closed Session

1. Consider and act on a technical correction to an LSC benefits plan document
2. Consider and act on adjournment of meeting
* * * * *

Institutional Advancement Committee

Closed Session

1. Approval of agenda.
2. Briefing by consultant candidates.
3. Consider and act on selection of a consultant.
4. Consider and act on adjournment of meeting.
* * * * *

Audit Committee

1. Approval of agenda.
2. Approval of minutes of the Committee's July 20, 2011 meeting.
3. Report on 403(b) annual plan review and update on annual audit:
• Alice Dickerson, Director of Human Resources.
4. Consider and act on revised Audit Committee charter:
• Mattie Cohan, Office of Legal Affairs.
• Ronald Merryman, Office of Inspector General.
5. Briefing on LSC's Contracting Procedures:
• David Richardson, Comptroller/ Treasurer.
6. Consider and act on which major management processes the Committee will review in calendar year 2012.
7. Public comment.
8. Consider and act on other business.
9. Consider and act on adjournment of meeting.
* * * * *

Tuesday, October 18, 2011

Promotion & Provision for the Delivery of Legal Services Committee

1. Approval of Agenda.
2. Approval of Minutes of the Committee's meeting of July 20, 2011.
3. Courthouse help desk panel presentation.
4. Discussion of future agenda topics.
5. Public comment.
6. Consider and act on other business.
7. Consider and act on adjournment of meeting.
* * * * *

Board of Directors

Open Session

1. Pledge of Allegiance.
2. Approval of agenda.
3. Approval of Minutes of the Board's Open Session meeting of July 21, 2011.
4. Approval of Minutes of the Board's Open Session meeting of September 19, 2011.
5. Chairman's Report.
6. Members' Reports.
7. President's Report.
8. Inspector General's Report.
9. Consider and act on the report of the Governance & Performance Review Committee.
10. Consider and act on the report of the Promotion & Provision for the Delivery of Legal Services Committee.
11. Consider and act on the report of the Finance Committee.
12. Consider and act on the report of the Audit Committee.
13. Consider and act on the report of the Operations & Regulations Committee.
14. Consider and act on the *Fiscal Oversight Task Force Report* and public comment received in response to the request for comments published in the **Federal Register** at 76 FR 169 (August 31, 2011).
15. Public comment.
16. Consider and act on other business.
17. Consider and act on whether to authorize an executive session of the Board to address items listed below, under Closed Session.

Closed Session

18. Approval of Minutes of the Board's Closed Session meeting of July 21, 2011
19. Consider and act on report of the Institutional Advancement Committee regarding selection of a consultant
20. Consider and act on report of the Finance Committee regarding a technical correction to LSC's benefits plan document
21. Briefing by Management
22. Briefing by the Office of Inspector General
23. Consider and act on General Counsel's report on potential and pending litigation involving LSC
24. Consider and act on adjournment of meeting
* * * * *

CONTACT PERSON FOR INFORMATION: Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov*.

ACCESSIBILITY: LSC complies with the American's with Disabilities Act and Section 504 of the 1973 Rehabilitation Act. Upon request, meeting notices and materials will be made available in alternative formats to accommodate individuals with disabilities. Individuals who need other accommodations due to disability in order to attend the meeting in person or telephonically should contact Katherine Ward, at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov*, at least 2 business days in advance of the meeting. If a request is made without advance notice, LSC will make every effort to accommodate the request but cannot guarantee that all requests can be fulfilled.

Dated: October 7, 2011.

Victor M. Fortuno,

Vice President and General Counsel.

[FR Doc. 2011–26547 Filed 10–11–11; 11:15 am]

BILLING CODE 7050–01–P

MORRIS K. UDALL AND STEWART L. UDALL FOUNDATION, THE UNITED STATES INSTITUTE FOR ENVIRONMENTAL CONFLICT RESOLUTION

Agency Information Collection Activities: Submission for OMB Review; Comment Request: See List of Evaluation Related ICRs In Section A

AGENCY: Morris K. Udall and Stewart L. Udall Foundation, U.S. Institute for Environmental Conflict Resolution.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the U.S. Institute for Environmental Conflict Resolution (the U.S. Institute), part of the Udall Foundation, is submitting to the Office of Management and Budget (OMB) seven Information Collection Requests (ICRs). All seven ICRs seek revisions to currently approved collections due to expire 12/31/2011 (OMB control numbers 3320–0003, 3320–0004, 3320–2005, 3320–0006, 3320–0007, 3320–0009 and 3320–0010). The seven ICRs are consolidated under a single filing to provide a more coherent picture of information collection activities designed primarily to measure performance. The proposed collections are necessary to support program evaluation activities. The collection is not expected to have a significant economic impact on respondents or to affect a substantial number of small entities.

The U.S. Institute published a **Federal Register** notice on July 26, 2011, 76 FR, pages 44611–44613, to solicit public comments for a 60-day period. The U.S. Institute received one comment. The comment and the U.S. Institute's response are included in the ICRs. The purpose of this notice is to allow an additional 30 days for public comments regarding these ICRs.

DATES: Comments must be submitted on or before November 14, 2011.

ADDRESSES: Direct comments to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attention:* Heidi King, 725 17th Street, NW., Washington, DC 20503. Desk Officer for The Morris K. Udall and Stewart L. Udall Foundation, U.S. Institute for Environmental Conflict Resolution, *Heidi_R._King@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the evaluation instruments and supporting documents for the proposed paperwork collections can be downloaded from the Institute's Web site *http://ecr.gov/Resources/EvaluationProgram.aspx.*

FOR FURTHER INFORMATION OR FOR PAPER COPIES OF THE ICRS, CONTACT: Patricia Orr, Director of Policy, Planning and Budget, U.S. Institute for Environmental Conflict Resolution, 130 South Scott Avenue, Tucson, Arizona 85701, *Fax:* 520–670–5530, *Phone:* 520–901–8548, *E-mail: orr@ecr.gov.*

SUPPLEMENTARY INFORMATION:

Overview

To comply with the Government Performance and Results Act (GPRA) (Pub. L. 103–62), the U.S. Institute, as part of the Udall Foundation, produces an Annual Performance Budget and an Annual Performance and Accountability Report, linked directly to the goals and objectives outlined in the Institute's five-year Strategic Plan. The U.S. Institute's evaluation system is key to evaluating progress towards its performance goals. The U.S. Institute is committed to evaluating all of its projects, programs and services to measure and report on performance and also to use this information to learn from and improve its services. The refined evaluation system has been carefully designed to support efficient and economical generation, analysis and use of this much-needed information, with an emphasis on performance measurement, learning and improvement.

As part of the program evaluation system, the U.S. Institute intends to collect specific information from participants in, and users of, several of its programs and services. Specifically, this Federal Notice covers seven programs and services: (1) Conflict assessment services; (2) environmental conflict resolution (ECR) and collaborative problem solving mediation services; (3) ECR and collaborative problem solving facilitation services; (4) training services; (5) facilitated meeting services; (6) roster program services; and (7) program support and services. Evaluations mainly involve administering questionnaires to process participants and professionals, as well as members and users of the National Roster. Responses by members of the public to the Institute's request for information (*i.e.*, questionnaires) are voluntary.

In 2003, the Office of Management and Budget (OMB) approved the U.S. Environmental Protection Agency, Conflict Prevention and Resolution Center (CPRC) to act as a named administrator of the U.S. Institute's currently approved information collections for evaluation. In 2008, OMB granted similar status to the U.S. Department of the Interior, Office of Collaborative Action and Dispute Resolution (CADR). The U.S. Institute, CPRC and CADR will seek approval as part of this proposed collection to continue this evaluation partnership. The U.S. Institute will also request that the U.S. Army Corps of Engineers, Conflict Resolution and Public Participation Center (CPC) be added as an additional named administrator. Since other agencies have periodically approached the U.S. Institute seeking evaluation assistance, the U.S. Institute will also request OMB approval to continue to administer the evaluation questionnaires on behalf of other agencies. The burden estimates in the ICRs take into consideration the multi-agency usage of the evaluation instruments.

Key Issues

The U.S. Institute invites comments that can be used to:

i. Evaluate whether the proposed collection of information is necessary for the proper performance of the U.S. Institute, including whether the information will have practical utility;

ii. Enhance the quality, utility, and clarity of the information to be collected;

iii. Minimize the burden of the information collection on respondents, including suggestions concerning use of automated collection techniques or other forms of information technology.

Section A. Information on Individual ICRs:

1. Conflict Assessment Services

Type of Information Collection: Revision of a currently approved collection.

Title of Information Collection: Program Evaluation Instruments for Conflict Assessment Services.

OMB Number: 3320–0003.

Affected Public: Individuals or households, business or other for-profit, not-for-profit, federal and state, local or tribal government.

Frequency: One time.

Annual Number of Respondents: 430.

Total Annual Responses: 430.

Average Burden per Response: 5 minutes.

Total Annual Hours: 36.00.

Total Burden Cost: $1,700.00.

2. ECR and Collaborative Problem Solving Mediation Services

Type of Information Collection: Revision of a currently approved collection.

Title of Information Collection: Program Evaluation Instruments for ECR and Collaborative Problem Solving Mediation Services.

OMB Number: 3320–0004.

Affected Public: Individuals or households, business or other for-profit, not-for-profit, federal and state, local or tribal government.

Frequency: One time.

Annual Number of Respondents: 1,975.

Total Annual Responses: 1,975.

Average Burden per Response: 18 minutes.

Total Annual Hours: 596.00.

Total Burden Cost: $27,964.00.

3. ECR and Collaborative Problem Solving Facilitation Services

Type of Information Collection: Revision of a currently approved collection.
Title of Information Collection: Program Evaluation Instruments for ECR and Collaborative Problem Solving Facilitation Services.
OMB Number: 3320–0010.
Affected Public: Individuals or households, business or other for-profit, not-for-profit, federal and state, local or tribal government.
Frequency: One time.
Annual Number of Respondents: 1,975.
Total Annual Responses: 1,975.
Average Burden per Response: 12 minutes.
Total Annual Hours: 404.00.
Total Burden Cost: $19,036.00.

4. Training Services

Type of Information Collection: Revision of a currently approved collection.
Title of Information Collection: Program Evaluation Instruments for Training Services.
OMB Number: 3320–0006.
Affected Public: Individuals or households, business or other for-profit, not-for-profit, federal and state, local or tribal government.
Frequency: One time.
Annual Number of Respondents: 1,560.
Total Annual Responses: 1,560.
Average Burden per Response: 5.5 minutes.
Total Annual Hours: 143.
Total Burden Cost: $6,721.

5. Facilitated Meeting Services

Type of Information Collection: Revision of a Currently Approved Collection.
Title of Information Collection: Program Evaluation Instruments for Facilitated Meeting Services.
OMB Number: 3320–0007.
Affected Public: Individuals or households, business or other for-profit, not-for-profit, federal and state, local or tribal government.
Frequency: One time.
Annual Number of Respondents: 3,000.
Total Annual Responses: 3,000.
Average Burden per Response: 5 minutes.
Total Annual Hours: 252.
Total Burden Cost: $11,752.

6. Roster Program Services

Type of Information Collection: Revision of a currently approved collection.
Title of Information Collection: Program Evaluation Instruments for Roster Program Services.
OMB Number: 3320–0005.
Affected Public: Business or other for-profit, not-for-profit, federal and state, local or tribal government.
Frequency: One time.
Annual Number of Respondents: 550.
Total Annual Responses: 550.
Average Burden per Response: 3.5 minutes.
Total Annual Hours: 32.
Total Burden Cost: $1,488.

7. Program Support Services

Type of Information Collection: Revision of a currently approved collection.
Title of Information Collection: Program Evaluation Instruments for Program Support Services.
OMB Number: 3320–0009.
Affected Public: Business or other for-profit, not-for-profit, federal and state, local or tribal government.
Frequency: One time.
Annual Number of Respondents: 40.
Total Annual Responses: 40.
Average Burden per Response: 5.
Total Annual Hours: 3.33.
Total Burden Cost: $157.

Authority: 20 U.S.C. 5601–5609.

October 6, 2011.

Ellen Wheeler,

Executive Director, Udall Foundation.

[FR Doc. 2011–26481 Filed 10–12–11; 8:45 am]

BILLING CODE 6820–FN–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (11–090)]

NASA Advisory Council; Human Exploration and Operations 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 Human Exploration and Operations Committee of the NASA Advisory Council.

DATES: Tuesday, November 1, 2011, 8 a.m.–5 p.m.; Local Time.

ADDRESSES: National Aeronautics and Space Administration, Headquarters, 300 E Street, SW., Room 9H40, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Dr. Bette Siegel, Human Exploration and Operations Mission Directorate, National Aeronautics and Space Administration Headquarters, 300 E Street, SW., Washington, DC 20546, 202–358–2245; *bette.siegel@nasa.gov.*

SUPPLEMENTARY INFORMATION: The agenda topics for the meeting will include:

- Re-Organization Status
- Space Launch System/Multi-Purpose Crew Vehicle Status
- Overall Human Exploration and Operations (HEO) Mission Directorate Status
- Status of Commercial Orbital Transportation Services and Commercial Crew Development
- Global Exploration Roadmap
- Space Life and Physical Science Research and Applications

The meeting will be open to the public up to the seating capacity of the room. This meeting is also available telephonically and by WebEx. You must use a touch tone phone to participate in this meeting. Any interested person may dial access number, 1–888–997–8502 or 1–630–395–0408 and then enter the numeric participant passcode: 7614788 followed by the # sign. To join via WebEx the link is *https://nasa.webex.com/*, meeting number 991 810 548, and password 1101*Tues. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Attendees will be required to comply with NASA security procedures, including the presentation of a valid picture ID. U.S. citizens will need to show valid, officially-issued picture identification such as a driver's license to enter into the building and must state they are attending the NASA Advisory Council Human Exploration and Operations Committee session in Room 9H40. Permanent Resident Aliens will need to show residency status (valid green card) and a valid, officially issued picture identification such as a driver's license and must state they are attending the Human Exploration and Operations Committee session in Room 9H40. All non-U.S. citizens must submit, no less than 10 working days prior to the meeting, their name, current address, citizenship, company affiliation (if applicable) to include address, telephone number, and their title, place of birth, date of birth, U.S. visa information to include type, number and expiration date, U.S. Social Security Number (if applicable) to Dr. Bette Siegel, Executive Secretary, Human Exploration and Operations Committee, Human Exploration and Operations Mission Directorate, NASA Headquarters, Washington, DC 20546.

For questions, please contact Dr. Siegel at *bette.siegel@nasa.gov* or by telephone at (202) 358–2245.

Dated: October 5, 2011.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2011–26391 Filed 10–12–11; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that thirteen meetings of the Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 as follows (ending times are approximate):

Arts Education (application review): November 1–4, 2011 in Room 716. This meeting, from 9 a.m. to 5:30 p.m. on November 1st–3rd and from 9 a.m. to 3 p.m. on November 4th, will be closed.

Music (application review): November 1–3, 2011 in Room 714. This meeting, from 9 a.m. to 5:30 p.m. on November 1st–2nd and from 9 a.m. to 4:30 p.m. on November 3rd, will be closed.

Presenting (application review): November 1–2, 2011 in Room 627. This meeting, from 9 a.m. to 5:30 p.m. on November 1st and from 9 a.m. to 3:45 p.m. on November 2nd, will be closed.

Media Arts (application review): November 2–3, 2011 in Room 730. This meeting, from 9 a.m. to 5:30 p.m. on November 2nd and from 9 a.m. to 4:30 p.m. on November 3rd, will be closed.

Presenting (application review): November 3–4, 2011 in Room 627. This meeting, from 9 a.m. to 5:30 p.m. on November 3rd and from 9:00 a.m. to 4:45 p.m. on November 4th, will be closed.

Dance (application review): November 7–8, 2011 in Room 716. This meeting, from 9 a.m. to 6 p.m. both days, will be closed.

Local Arts Agencies (application review): November 8–9, 2011 in Room 730. This meeting, from 9 a.m. to 5:30 p.m. on November 8th and from 9 a.m. to 2:30 p.m. on November 9th, will be closed.

Folk and Traditional Arts (application review): November 8–10, 2011 in Room 627. This meeting, from 9 a.m. to 5:30 p.m. on November 8th–9th, and from 9 a.m. to 4 p.m. on November 10th, will be closed.

Theater (application review): November 8–10, 2011 in Room 714. This meeting, from 9 a.m. to 5:30 p.m. on November 8th, from 9 a.m. to 6 p.m. on November 9th and from 9 a.m. to 3 p.m. on November 10th, will be closed.

Dance (application review): November 9, 2011 in Room 716. This meeting, from 9 a.m. to 6 p.m., will be closed.

Arts Education (application review): November 14–15, 2011 in Room 716. This meeting, from 9 a.m. to 6 p.m. on November 14th and from 9 a.m. to 4:30 p.m. on November 15th, will be closed.

Museums (application review): November 15–17, 2011 in Room 627. This meeting, from 9 a.m. to 5:30 p.m. on November 15th, from 9 a.m. to 6 p.m. on November 16th and from 9 a.m. to 2 p.m. on November 17th, will be closed.

Music (application review): November 15–18, 2011 in Room 714. This meeting, from 9 a.m. to 5:30 p.m. on November 15th–17th and from 9 a.m. to 4:30 p.m. on November 18th, will be closed.

The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of February 15, 2011, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman. If you need any accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202–682–5532, TDY–TDD 202–682–5496, at least seven (7) days prior to the meeting.

Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202–682–5691.

Dated: October 6, 2011.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 2011–26421 Filed 10–12–11; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of Humanities Panels will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Elizabeth Voyatzis, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* November 1, 2011.
Time: 9 a.m. to 5 p.m.
Location: Room 315.
Program: This meeting will review applications for Enduring Questions, submitted to the Division of Education at the September 15, 2011 deadline.

2. *Date:* November 1, 2011.
Time: 9 a.m. to 5 p.m.
Location: Room 421.
Program: This meeting will review applications for Art and Literature in America's Historical and Cultural Organizations Grants Program, submitted to the Division of Public

Programs at the August 17, 2011 deadline.

3. *Date:* November 1, 2011.
Time: 9 a.m. to 5 p.m.
Location: Room 415.
Program: This meeting will review applications for World Studies II in Preservation and Access Humanities Collections and Reference Resources, submitted to the Division of Preservation and Access at the July 20, 2011 deadline.

4. *Date:* November 2, 2011.
Time: 9 a.m. to 5 p.m.
Location: Room 421.
Program: This meeting will review applications for African American and Ethnic History and Culture in America's Historical and Cultural Organizations Grants Program, submitted to the Division of Public Programs at the August 17, 2011 deadline.

5. *Date:* November 2, 2011.
Time: 9 a.m. to 5 p.m.
Location: Room 315.
Program: This meeting will review applications for Enduring Questions, submitted to the Division of Education Programs at the September 15, 2011 deadline.

6. *Date:* November 3, 2011.
Time: 9 a.m. to 5 p.m.
Location: Room 415.
Program: This meeting will review applications for American Studies I in Preservation and Access Humanities Collections and Reference Resources, submitted to the Division of Preservation and Access at the July 20, 2011 deadline.

7. *Date:* November 3, 2011.
Time: 9 a.m. to 5 p.m.
Location: Room 315.
Program: This meeting will review applications for Enduring Questions, submitted to the Division of Education Programs at the September 15, 2011 deadline.

8. *Date:* November 4, 2011.
Time: 9 a.m. to 5 p.m.
Location: Room 421.
Program: This meeting will review applications for U.S. Western History in America's Historical and Cultural Organizations Grants Program, submitted to the Division of Public Programs at the August 17, 2011 deadline.

9. *Date:* November 7, 2011.
Time: 9 a.m. to 5 p.m.
Location: Room 421.
Program: This meeting will review applications for American History in America's Media Makers Grants Program, submitted to the Division of Public Programs at the August 17, 2011 deadline.

10. *Date:* November 7, 2011.
Time: 9 a.m. to 5 p.m.
Location: Room 315.
Program: This meeting will review applications for Enduring Questions, submitted to the Division of Education Programs at the September 15, 2011 deadline.

11. *Date:* November 8, 2011.
Time: 9 a.m. to 5 p.m.
Location: Room 315.
Program: This meeting will review applications for Enduring Questions, submitted to the Division of Education Programs at the September 15, 2011 deadline.

12. *Date:* November 9, 2011.
Time: 9 a.m. to 5 p.m.
Location: Room 421.
Program: This meeting will review applications for Historic Sites and Places in America's Historical and Cultural Organizations Grants Program, submitted to the Division of Public Programs at the August 17, 2011 deadline.

13. *Date:* November 9, 2011.
Time: 9 a.m. to 5 p.m.
Location: Room 415.
Program: This meeting will review applications for World Studies III in Preservation and Access Humanities Collections and Reference Resources, submitted to the Division of Preservation and Access at the July 20, 2011 deadline.

14. *Date:* November 15, 2011.
Time: 9 a.m. to 5 p.m.
Location: Room 415.
Program: This meeting will review applications for U.S. History & Culture IV in Preservation and Access Humanities Collections and Reference Resources, submitted to the Division of Preservation and Access at the July 20, 2011 deadline.

15. *Date:* November 30, 2011.
Time: 9 a.m. to 5 p.m.
Location: Room 415.
Program: This meeting will review applications for American Studies II in Preservation and Access Humanities Collections and Reference Resources, submitted to the Division of Preservation and Access at the July 20, 2011 deadline.

Elizabeth Voyatzis,
Advisory Committee Management Officer.
[FR Doc. 2011–26403 Filed 10–12–11; 8:45 am]
BILLING CODE 7536–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Federal Council on the Arts and the Humanities Arts and Artifacts Indemnity Panel Advisory Committee

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meeting.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended) notice is hereby given that a meeting of the Arts and Artifacts Indemnity Panel of the Federal Council on the Arts and the Humanities will be held at 1100 Pennsylvania Avenue, NW., Washington, DC 20506, in Room 817, from 9:30 a.m. to 5 p.m., on Thursday, November 3, 2011.

The purpose of the meeting is to review applications for Certificates of Indemnity submitted to the Federal Council on the Arts and the Humanities for exhibitions beginning after January 1, 2012.

Because the proposed meeting will consider financial and commercial data and because it is important to keep values of objects, methods of transportation and security measures confidential, pursuant to the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated July 19, 1993, I have determined that the meeting would fall within exemption (4) of 5 U.S.C. 552(b) and that it is essential to close the meeting to protect the free exchange of views and to avoid interference with the operations of the Committee.

It is suggested that those desiring more specific information contact Advisory Committee Management Officer, Elizabeth Voyatzis, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, or call 202–606–8322.

Elizabeth Voyatzis,
Advisory Committee, Management Officer.
[FR Doc. 2011–26485 Filed 10–12–11; 8:45 am]
BILLING CODE 7536–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; President's Committee on the Arts and the Humanities: Meeting #67

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 President's Committee on the Arts and the Humanities (PCAH) will be held on Tuesday, November 1, 2011, from 2 p.m. to 4 p.m. The meeting will be held in the Crystal Room, The Willard Intercontinental, 1401 Pennsylvania Avenue, NW., Washington, DC 20004.

The Committee meeting will begin with welcome, introductions, and announcements. Updates and discussion on recent programs and

activities will follow. The meeting will also include a review of PCAH ongoing programming for youth arts and humanities learning, special events, and international cultural projects. The meeting will adjourn after discussion of other business, as necessary, and closing remarks.

The President's Committee on the Arts and the Humanities was created by Executive Order in 1982, which currently states that the "Committee shall advise, provide recommendations to, and assist the President, the National Endowment for the Arts, the National Endowment for the Humanities, and the Institute of Museum and Library Services on matters relating to the arts and the humanities."

Any interested persons may attend as observers, on a space available basis, but seating is limited. Therefore, for this meeting, individuals wishing to attend are advised to contact Lindsey Clark of the President's Committee seven (7) days in advance of the meeting at (202) 682–5409 or write to the Committee at 1100 Pennsylvania Avenue, NW., Suite 526, Washington, DC 20506. Further information with reference to this meeting can also be obtained from Ms. Clark at *lhansen@pcah.gov*.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Suite 724, Washington, DC 20506, (202) 682–5532, TDY–TDD (202) 682–5496, at least seven (7) days prior to the meeting.

Dated: October 6, 2011.

Kathy Plowitz-Worden,

Panel Coordinator, Office of Guidelines and Panel Operations.

[FR Doc. 2011–26424 Filed 10–12–11; 8:45 am]

BILLING CODE ;P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Sunshine Act Meeting of the National Museum and Library Services Board

AGENCY: Institute of Museum and Library Services (IMLS), NFAH.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the agenda of the forthcoming meeting of the National Museum and Library Services Board. This notice also describes the function of the Board. Notice of the meeting is required under the Sunshine in Government Act.

TIME AND DATE: Monday, October 24, 2011 from 9:30 a.m. to 11:30 a.m. and from 1:30 p.m. to 4:30 p.m.

AGENDA: Twenty-Fourth Meeting of the National Museum and Library Service Board Meeting:

9:30 a.m.–11:30 a.m. Executive Session

(Closed to the Public)

1:30 p.m.–4:30 p.m. Twenty-Fourth National Museum and Library Services Board Meeting:

I. Welcome

II. Approval of Minutes

III. Financial Update

IV. Legislative Update

V. Strategic Plan

VI. Program Updates

V. Board Program: Digital Communities

VII. Adjourn

(Open to the Public)

PLACE: The meetings will be held in the New Mexico Room at the La Fonda Hotel, 100 East San Francisco Street, Santa Fe, NM 87501. Telephone: (505) 982–5511.

FOR FURTHER INFORMATION CONTACT: Elizabeth Lyons, Special Events and Board Liaison, Institute of Museum and Library Services, 1800 M Street, NW., 9th Floor, Washington, DC 20036. Telephone: (202) 653–4676.

SUPPLEMENTARY INFORMATION: The National Museum and Library Services Board is established under the Museum and Library Services Act, 20 U.S.C. 9101 *et seq*. The Board advises the Director of the Institute on general policies with respect to the duties, powers, and authorities related to Museum and Library Services.

The Executive Session on Monday, October 24, 2011 from 9:30 a.m. until 11:30 a.m., will be closed pursuant to subsections (c)(4) and (c)(9) of section 552b of Title 5, United States Code because the Board will consider information that may disclose: Trade secrets and commercial or financial information obtained from a person and privileged or confidential; and information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. The meeting from 1:30 p.m. until 4:30 p.m. on Monday, October 24, 2011 is open to the public.

If you need special accommodations due to a disability, please contact: Institute of Museum and Library Services, 1800 M Street, NW., 9th Fl., Washington, DC 20036. Telephone: (202) 653–4676; TDD (202) 653–4614 at least seven (7) days prior to the meeting date.

Dated: October 3, 2011.

Nancy Weiss,

General Counsel.

[FR Doc. 2011–26455 Filed 10–12–11; 8:45 am]

BILLING CODE 7036–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Education and Human Resources; 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: Advisory Committee for Education and Human Resources (#1119).

Date/Time: November 2, 2011; 8:30 a.m. to 5 p.m.; November 3, 2011; 8:30 a.m. to 1 pm.

Place: NSF Headquarters, Room 375, 4201 Wilson Boulevard, Arlington VA 22230.

Type of Meeting: Open.

Contact Person: Amanda Edelman, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 292–8600, *aedelman@nsf.gov*.

Purpose of Meeting: To provide advice with respect to the Foundation's science, technology, engineering, and mathematics (STEM) education and human resources programming.

Agenda

November 2, 2011 (Wednesday Morning)

Remarks by the Committee Chair and NSF Assistant Director for Education and Human Resources (EHR)

- Brief review of NSF strategic plan
- Acceptance and review of Committee of Visitor Reports
  - Robert Noyce Teacher Scholarships
  - Integrative Graduate Education and Research Traineeship Program
  - Graduate STEM Fellows in K–12 Education
  - Informal Science Education
  - Innovative Technology Experiences for Students and Teachers
  - ADVANCE: Increasing the Participation and Advancement of Women in Academic Science and Engineering Careers
- Committee discussion of EHR collaborations with research directorates and offices.

Working Lunch

November 2, 2011 (Wednesday Afternoon)

- Continued Committee discussion of collaborations with research directorates and offices.

• Discussion of NSF interactions with external stakeholders

November 3, 2011 (Thursday Morning)

• Joint session with the NSF Advisory Committee for Mathematical and Physical Sciences.
• Committee visit with NSF Director Suresh and NSF Deputy Director Marrett.

Adjournment

Dated: October 6, 2011.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2011–26350 Filed 10–12–11; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2011–0227]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment about our intention to request the OMB's approval for renewal of an existing information collection that is summarized below. We are required to publish this notice in the **Federal Register** under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* NRC Form 313, "Application for Materials License" and NRC Forms 313A (RSO), 313A (AMP), 313A (ANP), 313A (AUD), 313A (AUT), and 313A (AUS).

2. *Current OMB approval number:* 3150–0120.

3. *How often the collection is required:* There is a one-time submittal of the NRC Form 313 (which may include the NRC Form 313A series of forms) with information to receive a license. Once a specific license has been issued, there is a 10-year resubmittal of the NRC Form 313 (which may include the NRC form 313A series of forms) with information for renewal of the license. Amendment requests are submitted as needed by the licensee.

There is a one-time submittal for all limited specific medical use applicants of a NRC Form 313A series form to have each new individual identified as a Radiation Safety Officer (RSO), authorized medical physicist (AMP), authorized nuclear pharmacist (ANP), or authorized user or a subsequent submittal of additional information for one of these individuals to be identified with a new authorization on a limited specific medical use license.

NRC Form 313A (RSO) is also used by medical broad scope licensees when identifying a new individual as an RSO or adding an additional RSO authorization for the individual. This submittal may occur when applying for a new license, amendment, or renewal.

NRC Form 313A (ANP) is also used by commercial nuclear pharmacy licensees when requesting an individual be identified for the first time as ANP. This submittal may occur when applying for a new license, amendment, or renewal.

4. *Who is required or asked to report:* All applicants requesting a license, amendment or renewal of a license for byproduct or source material.

5. *The number of annual respondents:* 19,432 (2,362 NRC licensees and 17,070 Agreement State licensees).

6. *The number of hours needed annually to complete the requirement or request:* 83,558 hours (10,157 NRC and 73,401 Agreement State hours).

7. *Abstract:* Applicants must submit NRC Form 313, which may include the six forms in the 313A series, to obtain a specific license to possess, use, or distribute byproduct or source material. These six forms in the 313A series are: (1) NRC Form 313A (RSO), "Radiation Safety Officer Training and Experience and Preceptor Attestation;" (2) NRC Form 313A (AMP), "Authorized Medical Physicist Training and Experience and Preceptor Attestation;" (3) NRC Form 313A (ANP), "Authorized Nuclear Pharmacist Training and Experience and Preceptor Attestation;" (4) NRC Form 313A (AUD), "Authorized User Training and Experience and Preceptor Attestation (for uses defined under 35.100, 35.200, and 35.500);" (5) NRC Form 313A (AUT), "Authorized User Training and Experience and Preceptor Attestation (for uses defined under 35.300);" and (6) NRC Form 313A (AUS), "Authorized User Training and Experience and Preceptor Attestation (for uses defined under 35.400 and 35.600)." The information is reviewed by the NRC to determine whether the applicant is qualified by training and experience, and has equipment, facilities, and procedures which are adequate to protect the public health and safety, and minimize danger to life or property.

Submit, by December 12, 2011, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

The public may examine and have copied for a fee publicly available documents, including the draft supporting statement, at the NRC's Public Document Room, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. OMB clearance requests are available at the NRC Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice. Comments submitted in writing or in electronic form will be made available for public inspection. 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. Comments submitted should reference Docket No. NRC–2011–0227. You may submit your comments by any of the following methods. Electronic comments: Go to *http://www.regulations.gov* and search for Docket No. NRC–2011–0227. Mail comments to NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Questions about the information collection requirements may be directed to the NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–6258, or by e-mail to *INFOCOLLECTS.Resource@NRC.GOV.*

Dated at Rockville, Maryland, this 5th day of October, 2011.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2011–26462 Filed 10–12–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0135]

Guidelines for Preparing and Reviewing Licensing Applications for the Production of Radioisotopes

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft interim staff guidance; request for public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is requesting public comment on chapters 1–6 of Draft Interim Staff Guidance (ISG), NPR–ISG–2011–002, that augments NUREG–1537, part 1, "Guidelines for Preparing and Reviewing Applications for the Licensing of Non-Power Reactors: Format and Content," for the Production of Radioisotopes and NUREG–1537, part 2, "Guidelines for Preparing and Reviewing Applications for the Licensing of Non-Power Reactors: Standard Review Plan and Acceptance Criteria," for the Production of Radioisotopes (chapters 7–18 of the ISG will be published in a future **Federal Register** notice). This ISG provides guidance to potential applicants for preparing an application to obtain a construction and operating license for a radioisotope production facility and the Research and Test Reactor Licensing Branch (PRLB) of the Division of Policy and Rulemaking (DPR) and the Office of Nuclear Reactor Regulation (NRR) on the information that should be included in such application.

DATES: Submit comments by November 14, 2011. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Please include Docket ID NRC–2011–0135 in the subject line of your comments. For additional instructions on submitting comments and instructions on accessing documents related to this action, see "Submitting Comments and Accessing Information" in the **SUPPLEMENTARY INFORMATION** section of this document. You may submit comments by any one of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2011–0135. Address questions about NRC dockets to Carol Gallagher, *telephone:* 301–492–3668; *e-mail: Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

FOR FUTHER INFORMATION CONTACT: Mr. Marcus Voth, Research and Test Reactors Licensing Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20005–0001; *telephone:* 301–415–1210; *e-mail: marcus.voth@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Submitting Comments and Accessing Information

Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

You 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, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* The draft ISG is located in ADAMS under accession numbers ML111160058 (Part 1, Chapters 1–6) and ML111810010 (Part 2, Chapters 1–6).
- *Federal Rulemaking Web Site:* Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2011–0135.

II. Public Comments

The NRC staff is soliciting public comments on draft NPR–ISG–2011–002. After the NRC staff considers any public comments received, it will make a determination regarding the issuance of the final ISG.

Dated at Rockville, Maryland, this 30th day of September, 2011.

For the Nuclear Regulatory Commission.

Patricia A. Silva,

Chief, Research and Test Reactors Projects Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–26472 Filed 10–12–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–285; NRC–2011–0239]

Omaha Public Power District; Fort Calhoun Station, Unit 1; Exemption

1.0 Background

Omaha Public Power District (OPPD or the licensee) is the holder of Renewed Facility Operating License No. DPR–40, which authorizes operation of the Fort Calhoun Station, Unit 1 (FCS). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of a pressurized-water reactor located in Washington County, Nebraska.

2.0 Request/Action

Title 10 of the *Code of Federal Regulations* (10 CFR), part 50, Appendix E, Sections IV.F.2.b and c require each licensee at each site to conduct an exercise of its onsite and offsite emergency plans biennially with full participation by each offsite authority having a role under the radiological response plan. During a biennial full participation emergency preparedness (EP) exercise, the NRC evaluates onsite EP activities while the Federal Emergency Management Agency (FEMA) evaluates offsite EP activities. FEMA's evaluation includes interactions with State and local

emergency management agencies (EMAs).

On June 6, 2011, FCS personnel declared a Notification of Unusual Event (NOUE) due to flooding of the Missouri River impacting FCS operation. The emergency condition was exited on August 29, 2011, when the Missouri River water level receded below the NOUE entry conditions. The states of Nebraska and Iowa expected Missouri River flood conditions to continue through the summer of 2011, followed by an extensive cleanup/recovery process into the last quarter of calendar year 2011.

FCS successfully conducted a full-participation EP exercise during the week of July 21, 2009. The licensee had scheduled its next full-participation biennial EP exercise for October 18, 2011; however, due to the impact of existing and projected Missouri River flood conditions on FCS and state and local recovery efforts, the licensee is requesting a deferral of its scheduled full-participation EP exercise until calendar year 2012.

The licensee states that this exemption request is justified by the existing and projected flood conditions of the Missouri River at FCS and its impact of the recovery actions on plant personnel, including emergency preparedness and response personnel. The licensee further states that the flood conditions have had a significant impact on the EMAs in Nebraska, Iowa, and local communities. State and local government agencies and response organizations required to participate in the FCS biennial EP exercise are directly involved in the response, recovery, and other continuing activities associated with the flooding of the Missouri River. It is in the best interest of the public to allow continued support of these ongoing efforts by the affected government agencies and response organizations without unnecessary distractions.

By letters dated July 28, 2011, the Nebraska and Iowa EMAs formally requested FEMA to defer the evaluation of offsite response organizations at FCS (Agencywide Documents Access and Management System (ADAMS) Accession Nos. ML112521454 and ML112521462, respectively). By letters to the Nebraska and Iowa EMAs dated August 18, 2011 (ADAMS Accession Nos. ML112420741 and ML112420753, respectively), FEMA agreed to the proposed postponement of the 2011 plume exposure pathway EP exercise until 2012.

Only temporary relief from the regulations is requested. FCS will resume its normal biennial EP exercise schedule in 2013.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when the exemptions are (1) authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) special circumstances are present. These special circumstances include the impact on the licensee's resources in support of onsite recovery actions and the impact on state and local government agencies and response organizations directly involved in the response, recovery, and other continuing activities associated with the Missouri River flooding.

Authorized by Law

This exemption would allow the licensee to accommodate impacts on onsite and offsite resources by postponing the biennial EP exercise from the previously scheduled date of October 18, 2011, until 2012.

As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR part 50. The NRC staff has determined that granting of the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

No Undue Risk to Public Health and Safety

The underlying purposes for conducting a biennial full-participation EP exercise are to ensure that emergency organization personnel are familiar with their duties and to test the adequacy of emergency plans. Additionally, 10 CFR part 50 Appendix E, Section IV.F.2.b requires licensees to maintain adequate emergency response capabilities during the intervals between biennial EP exercises by conducting drills to exercise the principal functional areas of emergency response. In order to accommodate the scheduling of full participation EP exercises, the NRC has allowed licensees to schedule the exercises at any time during the calendar biennium. Conducting the FCS full-participation EP exercise in calendar year 2012 places the exercise past the previously scheduled biennial calendar year of 2011.

The previous biennial full participation EP exercise of the FCS emergency plan was performed on July 21, 2009. The results of this exercise revealed that the overall performance of the emergency response organization demonstrated the implementation of adequate onsite emergency plans. The NRC evaluated the 2009 biennial EP exercise and provided the evaluation results in NRC integrated inspection report 05000285/2009004 dated November 13, 2009 (ADAMS Accession No. ML093170424). No NRC findings of significance with respect to the EP exercise were identified.

OPPD completed several drills and an off-year exercise subsequent to the July 21, 2009, exercise. Details on the drills and exercise were provided in Table 1 of Attachment 2 to the licensee's exemption request dated July 29, 2011 (ADAMS Accession No. ML112130144). The drills and off-year exercise encompassed the principal functional areas of emergency response, including management, coordination of emergency response, accident assessment, protective action decision making, public alerting and notification procedures, and plant systems diagnostics, repairs, and corrective actions.

The NRC staff considers the intent of 10 CFR Part 50, Appendix E, Sections IV.F.2.b and c met by having conducted this series of training drills.

Based on the above, no new accident precursors are created by allowing the licensee to postpone the biennial full participation EP exercise until 2012. Thus, the probability and consequences of postulated accidents are not increased. Therefore, there is no undue risk to public health and safety.

Consistent With Common Defense and Security

The proposed exemption would allow FCS to reschedule its biennial full participation EP exercise, originally scheduled for October 18, 2011, to a date mutually agreeable to the NRC, OPPD, and other affected offsite agencies in 2012. This change to the EP exercise schedule has no relation to security issues. Therefore, the common defense and security is not impacted by this exemption.

Special Circumstances

Pursuant to 10 CFR 50.12(a)(2), the NRC will consider granting an exemption to the regulations if special circumstances are present. This exemption request meets the special circumstances of paragraphs:

(a)(2)(ii) Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule;

(a)(2)(iv) The exemption would result in benefit to the public health and safety that compensates for any decrease in safety that may result from the grant of the exemption;

(a)(2)(v) The exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation.

With respect to 10 CFR 50.12(a)(2)(ii), the underlying purpose of 10 CFR part 50, Appendix E, Sections IV.F.2.b and c are to ensure that emergency response organization personnel are familiar with their duties, to test the adequacy of emergency plans, and to identify and correct weaknesses. The intent of this requirement is also met by the scheduled emergency plan participation drills and exercises, and provides a benefit by allowing for more opportunities for training of response personnel.

The training drills and off-year exercise conducted at FCS since the last biennial full participation EP exercise on July 21, 2009, have demonstrated the capability of onsite and offsite personnel, meeting the intent of these requirements. These measures are adequate to maintain an acceptable level of emergency preparedness, satisfying the underlying purpose of the rule. Therefore, the special circumstances of 10 CFR 50.12(a)(2)(ii) are satisfied.

With respect to 10 CFR 50.12(a)(2)(iv), the licensee states that the state and local government agencies and response organizations that are required to participate in the FCS biennial EP exercise are directly involved in the response, recovery, and other continuing activities associated with the Missouri River floods, straining the resources of the emergency management teams. Therefore, requiring them to divert their efforts to perform an EP exercise may result in undue stress and risk to the general public and plant personnel. Allowing the affected state and local government agencies, and response organizations to continue their undistracted efforts in response to the Missouri River flood conditions is in the best interest of the public. Therefore, the special circumstances of 10 CFR 50.12(a)(2)(iv) are satisfied.

With respect to 10 CFR 50.12(a)(2)(v), special circumstances are present whenever the exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation. The requested exemption is a one-time schedule exemption to allow deferral of the biennial full participation EP exercise of the FCS emergency plan from October 18, 2011, until calendar year 2012 on a date mutually agreeable to the NRC, OPPD, and other affected offsite agencies. OPPD is only requesting temporary relief from the regulation as FCS will resume its normal biennial EP exercise schedule in 2013.

Full participation in the biennial EP exercise of affected offsite government agencies and response organizations had been established and coordinated until it was determined that participation in the biennial exercise would hinder the offsite agencies in the response, recovery, and other activities associated with the Missouri River flooding. The licensee has made good faith efforts to comply with the regulations as the conditions necessitating the requested exemption could not have been foreseen and are beyond the control of OPPD personnel. The requested exemption would provide only temporary relief from the applicable regulation and the licensee has made a good faith effort to comply with the regulation. Therefore, the special circumstances of 10 CFR 50.12(a)(2)(v) are satisfied.

Thus, this exemption request meets the special circumstances of 10 CFR 50.12(a)(2).

4.0 Environmental Consideration

This exemption authorizes a one-time exemption from the requirements of 10 CFR 50 Appendix E, Sections IV.F.2.b and c for FCS. The NRC staff has determined that this exemption involves no significant hazards considerations:

(1) The proposed exemption is limited to postponing the 2011 biennial full-participation EP exercise for FCS until 2012 on a one-time only basis. The proposed exemption does not make any changes to the facility or operating procedures and does not alter the design, function or operation of any plant equipment. Therefore, issuance of this exemption does not increase the probability or consequences of an accident previously evaluated.

(2) The proposed exemption is limited to postponing the 2011 full-participation EP biennial exercise for FCS until 2012 on a one-time only basis. The proposed exemption does not make any changes to the facility or operating procedures and would not create any new accident initiators. The proposed exemption does not alter the design, function or operation of any plant equipment. Therefore, this exemption does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed exemption is limited to postponing the 2011 biennial full-participation EP exercise for FCS until 2012 on a one-time only basis. The proposed exemption does not alter the design, function or operation of any plant equipment. Therefore, this exemption does not involve a significant reduction in the margin of safety.

Based on the above, the NRC staff concludes that the proposed exemption does not involve a significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and accordingly, a finding of "no significant hazards consideration" is justified.

The NRC staff has also determined that the exemption involves no significant increase in the amounts, and no significant change in the types, of any effluents that may be released offsite; that there is no significant increase in individual or cumulative occupational radiation exposure; that there is no significant construction impact; and there is no significant increase in the potential for or consequences from a radiological accident. Furthermore, the requirement from which the licensee will be exempted involves scheduling requirements. Accordingly, the exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(25). Pursuant to 10 CFR 51.22(b) no environmental impact statement or environmental assessment need be prepared in connection with the issuance of the exemption.

5.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission, hereby grants OPPD an exemption from the requirements of 10 CFR part 50, Appendix E, sections IV.F.2.b and c to conduct the biennial full participation EP exercise required for 2011, and to permit the exercise to be conducted by 2012 for FCS.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 5th day of October 2011.

For the Nuclear Regulatory Commission.

Michele G. Evans,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–26488 Filed 10–12–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–285; NRC–2010–0087]

Omaha Public Power District, Fort Calhoun Station, Unit 1; Exemption

1.0 Background

Omaha Public Power District (OPPD or the licensee) is the holder of Facility Operating License No. DPR–40 which authorizes operation of the Fort Calhoun Station, Unit 1 (FCS). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC or the Commission) now or hereafter in effect.

The facility consists of one pressurized-water reactor located in Washington County, Nebraska.

2.0 Request/Action

Title 10 of the *Code of Federal Regulations* (10 CFR) Part 73, "Physical protection of plants and materials," Section 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," published on March 27, 2009, effective May 26, 2009, with a full implementation date of March 31, 2010, requires licensees to protect, with high assurance, against radiological sabotage by designing and implementing comprehensive site security programs. The amendments to 10 CFR 73.55 published in the **Federal Register** on March 27, 2009 (74 FR 13926), establish and update generically applicable security requirements similar to those previously imposed by Commission orders issued after the terrorist attacks of September 11, 2001, and implemented by licensees. In addition, the amendments to 10 CFR 73.55 include additional requirements to further enhance site security based upon insights gained from implementation of the post September 11, 2001, security orders. It is from three of these new requirements that OPPD originally sought an exemption from the March 31, 2010, implementation date. All other physical security requirements established by this recent rulemaking have been implemented by the licensee.

By letter dated December 31, 2009, as supplemented by letter dated January 21, 2010, the licensee requested an exemption in accordance with 10 CFR 73.5, "Specific exemptions." Portions of the licensee's letters dated December 31, 2009, and January 21, 2010, contain sensitive unclassified non-safeguards information (SUNSI) (security-related) and, accordingly, those portions are being withheld from public disclosure. Publicly available versions of the licensee's letters dated December 31, 2009, and January 21, 2010 are available in the Agencywide Documents Management and Access System (ADAMS) at Accession Nos. ML100050032 and ML100810124, respectively. By letter dated March 23, 2010 (ADAMS Accession No. ML100630447), the NRC granted a previous exemption to OPPD for specific items subject to the revised rule in 10 CFR 73.55, allowing the implementation to be deferred until October 5, 2011.

Subsequent to issuance of the scheduler exemption and prior to completion of the planned physical protection program upgrades, FCS experienced sustained flooding conditions beginning in the spring and continuing through the summer of 2011. These abnormal flooding conditions required the cessation of all work needed to complete the planned physical protection program upgrades at FCS and necessitated the diversion of all available resources to perform essential emergency operations and other compensatory measures. These actions are deemed necessary to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety.

By letter dated September 2, 2011, the licensee submitted a request for a schedular exemption to the compliance date identified in 10 CFR 73.55(a)(1) to implement two of the original three requirements stated in 10 CFR part 73 for FCS. Portions of the September 2, 2011, letter contain SUNSI (security-related) and, accordingly, those portions are withheld from public disclosure. A redacted version of the licensee's letter dated September 2, 2011, is available in ADAMS Accession No. ML11250A059. In its letter dated September 2, 2011, the licensee stated that FCS will complete one of the projects by October 5, 2011, and the new requested compliance date for the remaining two requirements is November 5, 2013.

By e-mail dated September 28, 2011, the NRC staff requested additional information from the licensee. The NRC request contained SUNSI (security-related) and, accordingly, is withheld from public disclosure. By letter dated September 30, 2011, the licensee responded to the NRC request for additional information. Portions of the licensee's letter dated September 30, 2011, contain SUNSI (security-related) and, accordingly, those portions are withheld from public disclosure. A redacted version of the licensee's letter dated September 30, 2011, is available in ADAMS Accession No. ML112760629. In its letter dated September 30, 2011, FCS stated that interim security measures can be, and will be taken to achieve compliance with one of the remaining two requirements that were addressed in its letter dated September 2, 2011, leaving only one requirement for which compliance cannot be met. Therefore, the licensee requested a schedular exemption for one requirement until November 5, 2013. Granting this exemption for extending the implementation date for the one remaining item would allow the licensee to complete the modifications for a more conservative approach for achieving full compliance.

3.0 Discussion of Part 73 Schedule Exemptions From the October 5, 2011, Full Implementation Date

Pursuant to 10 CFR 73.55(a)(1), "By March 31, 2010, each nuclear power reactor licensee, licensed under 10 CFR part 50, shall implement the requirements of this section through its Commission-approved Physical Security Plan, Training and Qualification Plan, Safeguards Contingency Plan, and Cyber Security Plan referred to collectively hereafter as 'security plans.'" Pursuant to 10 CFR 73.55(b)(1), "the licensee shall establish and maintain a physical protection program, to include a security organization, which will have as its objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety." Pursuant to 10 CFR 73.5, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 73 when the exemptions are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

NRC approval of this exemption, as noted above, would allow an extension from October 5, 2011, until November 5, 2013, of the implementation date for one specific requirement of the new rule. As stated above, 10 CFR 73.5 allows the NRC to grant exemptions from the requirements of 10 CFR part 73. The NRC staff has determined that granting of the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

In the draft final rule sent to the Commission, the NRC staff proposed that the requirements of the new regulation be met within 180 days. The Commission directed a change from 180 days to approximately 1 year for licensees to fully implement the new requirements. This change was incorporated into the final rule. From this, it is clear that the Commission wanted to provide a reasonable timeframe for licensees to reach full compliance.

As noted in the final rule, the Commission also anticipated that licensees would have to conduct site-specific analyses to determine what changes were necessary to implement the rule's requirements, and that changes could be accomplished through a variety of licensing mechanisms, including exemptions. Since issuance of the final rule, the Commission has rejected a request to generically extend the rule's compliance date for all operating nuclear power plants, but noted that the Commission's regulations provide mechanisms for individual licensees, with good cause, to apply for relief from the compliance date as documented in the letter from R. W. Borchardt (NRC) to M. S. Fertel (Nuclear Energy Institute) dated June 4, 2009. The licensee's request for an exemption is, therefore, consistent with the approach set forth by the Commission and discussed in the NRC letter dated June 4, 2009.

FCS Schedule Exemption Request

The licensee provided detailed information in the enclosure/attachment to its letters dated September 2 and 30, 2011, requesting an exemption. The licensee is requesting additional time to implement one specific requirement of the new rule due to sustained abnormal flooding conditions throughout the spring and summer of 2011. The flooding conditions required the cessation of all work needed to complete the planned enhancements to FCS's physical protection program and necessitated diversion of all available resources to perform essential emergency operations and other compensatory measures. The length of the extension is due to flood damage and the amount of engineering and design, material procurement, and construction and installation activities involved, while allowing for inclement weather. The licensee's submittals describe a comprehensive plan to upgrade the security capabilities of the FCS site and provide a timeline for achieving full compliance with the new regulation. The enclosure/attachment to the licensee's letters contain SUNSI (security-related) regarding the site security plan, details of the specific requirement of the regulation that the site cannot be in compliance with by the October 5, 2011 deadline, and a timeline with critical path activities that will bring the licensee into full compliance by November 5, 2013. The timeline provides milestone dates for engineering, planning and procurement, implementation, startup and testing, engineering closeout, and project closeout. Redacted versions of the licensee's letters dated September 2 and 30, 2011, including the enclosure/attachment, are publicly available at ADAMS Accession Nos. ML11250A059 and ML112760629, respectively.

Notwithstanding the schedular exemptions for this limited requirement, the licensee will continue to be in compliance with all other applicable physical security requirements as described in 10 CFR 73.55 and reflected in its current NRC-approved physical security program. By November 5, 2013, FCS will be in full compliance with all the regulatory requirements of 10 CFR 73.55, as issued on March 27, 2009.

4.0 Conclusion for Part 73 Schedule Exemption Request

The NRC staff has reviewed the licensee's submittals and concludes that the licensee has provided adequate justification for its request for an extension of the compliance date with regard to one specified requirement of 10 CFR 73.55 until November 5, 2013.

Accordingly, the Commission has determined that pursuant to 10 CFR 73.5, "Specific exemptions," exemption from the October 5, 2011, compliance date is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants the requested exemption.

The NRC staff has determined that the long-term benefits that will be realized when the FCS security modifications are complete justifies exceeding the full compliance date with regard to the specified requirements of 10 CFR 73.55. Therefore, the NRC concludes that the licensee's actions are in the best interest of protecting the public health and safety through the security changes that will result from granting this exemption.

As per the licensee's request and the NRC's regulatory authority to grant an exemption from the October 5, 2011, deadline for the one item specified in the enclosure/attachment to FCS's letters dated September 2 and 30, 2011, the licensee is required to be in full compliance with 10 CFR 73.55 by November 5, 2013. In achieving compliance, the licensee is reminded that it is responsible for determining the appropriate licensing mechanism (*i.e.*, 10 CFR 50.54(p) or 10 CFR 50.90) for incorporation of all necessary changes to its security plans.

Pursuant to 10 CFR 51.32, "Finding of no significant impact," the Commission has previously determined that the granting of this exemption will not have a significant effect on the quality of the human environment (January 3, 2011; 76 FR 187).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 5th day of October 2011.

For the Nuclear Regulatory Commission.

Michele G. Evans,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–26466 Filed 10–12–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–7022; NRC–2011–0236]

Notice of Acceptance of Application for Special Nuclear Materials License From Passport Systems, Inc., Opportunity To Request a Hearing, and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of license application, opportunity to request a hearing, and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation.

DATES: Requests for a hearing or Leave to Intervene must be filed by December 12, 2011. Any potential party as defined in Title 10 of the *Code of Federal Regulations* (10 CFR) 2.4 who believes access to Sensitive Unclassified Non-Safeguards Information (SUNSI) information is necessary to respond to this notice must request document access by October 24, 2011.

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

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

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

• *Federal Rulemaking Web Site:* Public comments and supporting materials related to this final rule can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2011–0236. Address questions about NRC dockets to Carol Gallagher, telephone: 301–492–3668; e-mail: *Carol.Gallagher@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Richard Thompson, Project Manager, Fuel Manufacturing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, EBB2–C40M, Rockville, Maryland 20852; telephone: 301–492–3220; e-mail: *Richard.Thompson@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC or the Commission) has accepted for detailed technical review an application for a new license for the possession and use of special nuclear material (SNM), submitted by Passport Systems, Inc. (Passport or the Applicant). The license would authorize performance testing of radiation detection systems for locating SNM, under a project sponsored by the Domestic Nuclear Detection Office (DNDO) of the U.S. Department of Homeland Security (DHS). The Applicant requested the new license for a period of 10 years. This license application, if approved, would authorize Passport to possess and use special nuclear materials under 10 CFR Part 70, "Domestic Licensing of Special Nuclear Material."

II. Discussion

In its application, dated November 5, 2010, Passport requested a license to possess and use SNM to conduct tests of new technology for use in detection systems. The SNM would be used as test objects for concept demonstrations and characterization testing at the Passport facilities. Following an administrative review, the NRC requested the Applicant to revise its application to include elements essential to conducting a detailed technical review. The Applicant submitted a revised license application, dated February 8, 2011. By letter dated March 1, 2011, the NRC staff found the revised license application acceptable to begin a detailed technical review. The application has been docketed in Docket No. 70–7022.

If the NRC approves the license application, the basis for approval will be documented in a Safety Evaluation Report (SER) supporting the issuance of a new NRC license. The SER would contain the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the NRC's regulations, for issuing an SNM license. The SER would also include a determination of the need to complete an environmental assessment based on the proposed action.

III. Opportunity To Request a Hearing; Petitions for Leave To Intervene

Requirements for submitting hearing requests and petitions for Leave to Intervene are found in 10 CFR 2.309, "Hearing Requests, Petitions to Intervene, Requirements for Standing, and Contentions." Interested persons should consult 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, 11555 Rockville Pike, Room O1–F21, Rockville, MD 20852. You may also call the PDR at 1–800–397–4209 or 301–415–4737. The NRC regulations are also accessible electronically from the NRC's Web site at *http://www.nrc.gov*.

Any person whose interest may be affected by this proceeding, and who desires to participate as a party in the proceeding must file a written petition for Leave to Intervene. 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 must provide the name, address, and telephone number of the petitioner; and specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest.

A petition for Leave to Intervene must also include a specification of the contentions that the petitioner seeks to have litigated in the hearing. For each contention, the petitioner must provide a specific statement of the issue of law or fact to be raised or controverted, as well as a brief explanation of the basis for the contention. Additionally, the petitioner must demonstrate that the issue raised by each contention is within the scope of the proceeding, and is material to the findings that NRC must make to support the granting of a license in response to the application. The petition must also include a concise statement of the alleged facts or expert opinions which support the position of the petitioner, and on which the petitioner intends to rely at the hearing—together with references to the specific sources and documents on which the petitioner intends to rely. Finally, the petition must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact, including references to specific portions of the license application that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the license application fails to contain information on a relevant matter as required by law, the identification of each failure, and the supporting reasons for the petitioner's belief. Each contention must be one that, if proven, would entitle the petitioner to relief.

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 with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC's regulations, policies, and procedures. The Atomic Safety and Licensing Board (the Licensing Board) will set the time and place for any pre-hearing conferences and evidentiary hearings, and the appropriate notices will be provided.

Petitions for leave to intervene must be submitted no later than 60 days from October 13, 2011. Non-timely petitions for Leave to Intervene and contentions, amended petitions, and supplemental petitions will not be entertained, absent a determination by the Commission, the Licensing Board or a Presiding Officer that the petition should be granted and/or the contentions should be admitted based upon a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

A State, county, municipality, Federally recognized Indian Tribe, or agencies thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(d)(2). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by December 12, 2011. The petition must be filed in accordance with the filing instructions in Section IV of this document, and should meet the requirements for petitions for Leave to Intervene set forth in this section, except that State and Federally recognized Indian tribes do not need to address the standing requirements in 10 CFR 2.309(d)(1) if the facility is located within its boundaries. The entities listed above could also seek to participate in a hearing as a non-party, pursuant to 10 CFR 2.315(c).

Any person who does not wish, or is not qualified, to become a party to this proceeding may request permission to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any pre-hearing conference, subject to such limits and conditions as may be imposed by the Licensing Board. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by December 12, 2011.

IV. Electronic Submissions (E-Filing)

All documents filed in NRC's 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 any document 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's 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://ehd1.nrc.gov/EHD/*, 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 telephone 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.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information (SUNSI) for Contention Preparation

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing SUNSI.

B. Within 10 days after publication of this Notice of Acceptance and Opportunity to Request a Hearing, any potential party who believes access to SUNSI is necessary to respond to this notice may request such access. A "potential party" is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication will not be considered, absent a showing of good cause for the late filing addressing why the request could not have been filed earlier.

C. The requester shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff; and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The e-mail address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov*, respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1);

(3) The identity of the individual or entity requesting access to SUNSI and the requester's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly-available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention;

D. Based on an evaluation of the information submitted under paragraph C.(3), the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the Notice of Hearing or Opportunity for Hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC's staff, either after a determination on standing and need for access or after a determination on trustworthiness and reliability, the NRC's staff shall immediately notify the requestor in writing, briefly stating the reason(s) for the denial.

(2) The requester may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

H. Review of Grants of Access. A party other than the requester may challenge an NRC staff's determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff's determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff's determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR Part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered:

[1] While a request for Hearing or Petition to Intervene in this proceeding must comply with the filing requirements of the NRC's "E-Filing Rule," the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge, if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

[3] Requesters should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff's determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

Dated at Rockville, Maryland, this 6th day of October, 2011.

For the Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/Activity
0	Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	Nuclear Regulatory Commission (NRC) staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no "need" or no likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2011–26486 Filed 10–12–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0289]

Final Division of Safety Systems Interim Staff Guidance DSS–ISG–2010–01: Staff Guidance Regarding the Nuclear Criticality Safety Analysis for Spent Fuel Pools

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing the final Division of Safety Systems Interim Staff Guidance, (DSS–ISG) DSS–ISG–2010–01, "Staff Guidance Regarding the Nuclear Criticality Safety Analysis for Spent Fuel Pools." This DSS–ISG provides updated guidance to the NRC staff reviewer to address the increased complexity of recent spent fuel pool (SFP) license application analyses and operations. The guidance is intended to reiterate existing guidance, clarify ambiguity in existing guidance, and identify lessons learned based on recent submittals.

FOR FURTHER INFORMATION CONTACT: Mr. Kent Wood, Division of Safety Systems, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; *telephone:* 301–415–4120; or *e-mail: Kent.Wood@nrc.gov.*

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

- *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*
- *Federal Rulemaking Web Site:* Public comments and supporting materials related to this final rule can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2010–0289. Address questions about NRC dockets to Carol Gallagher, *telephone:* 301–492–3668; *e-mail: Carol.Gallagher@nrc.gov.*

SUPPLEMENTARY INFORMATION: The agency posts its issued staff guidance in the agency external Web page (*http://www.nrc.gov/reading-rm/doc-collections/isg/*).

The guidance in DSS–ISG–2010–01 is to be used by NRC staff to review: (i)

Future applications; and (ii) future licensee applications for license amendments and requests for exemptions from compliance with applicable requirements.

Dated at Rockville, Maryland this 29th day of September 2011.

For the Nuclear Regulatory Commission.

Sher Bahadur,

Acting Director, Division of Safety Systems, Office of Nuclear Reactor Regulation

[FR Doc. 2011–26468 Filed 10–12–11; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This gives notice of OPM decisions granting authority to make appointments under Schedules A, B, and C in the excepted service as required by 5 CFR 213.103.

FOR FURTHER INFORMATION CONTACT: Roland Edwards, Senior Executive Resource Services, Executive Resources and Employee Development, Employee Services, 202–606–2246.

SUPPLEMENTARY INFORMATION: Appearing in the listing below are the individual authorities established under Schedules A, B, and C between July 1, 2011, and July 31, 2011. These notices are published monthly in the **Federal Register** at *http://www.gpoaccess.gov/fr/*. A consolidated listing of all authorities as of June 30 is also published each year. The following Schedules are not codified in the Code of Federal Regulations. These are agency-specific exceptions.

Schedule A

No Schedule A authorities to report during July 2011.

Schedule B

No Schedule B authorities to report during July 2011.

Schedule C

The following Schedule C appointments were approved during July 2011.

Agency name	Organization name	Position title	Authorization number	Effective date
DEPARTMENT OF AGRICULTURE.	Office of the Assistant Secretary for Congressional Relations.	Staff Assistant	DA110105	7/13/2011
	Office of the Deputy Secretary	Special Assistant	DA110109	7/13/2011
	Office of the Under Secretary Farm and Foreign Agricultural Service.	Special Assistant	DA110113	7/14/2011
	Food and Nutrition Service	Chief of Staff	DA110110	7/14/2011
DEPARTMENT OF COMMERCE.	Office of Business Liaison	Special Assistant	DC110107	7/26/2011
	National Oceanic and Atmospheric Administration.	Deputy Director, Office of Legislative Affairs.	DC110104	7/13/2011
	National Oceanic and Atmospheric Administration.	Special Assistant	DC110096	7/6/2011
COUNCIL ON ENVIRONMENTAL QUALITY.	Council on Environmental Quality	Special Assistant (Energy/Climate Change).	EQ110006	7/20/2011
DEPARTMENT OF DEFENSE	Office of the General Counsel	Attorney-Advisor (General)	DD110104	7/29/2011
	Washington Headquarters Services	Staff Assistant	DD110112	7/20/2011
DEPARTMENT OF THE ARMY	Office of the Assistant Secretary Army (Acquisition, Logistics and Technology).	Special Assistant (Acquisition, Logistics and Technology).	DW110047	7/1/2011
	Office Assistant Secretary Army (Manpower and Reserve Affairs).	Special Assistant (Manpower and Reserve Affairs).	DW110048	7/13/2011
DEPARTMENT OF THE NAVY	Office of the Under Secretary of the Navy.	Director, Strategic Communications	DN110038	7/22/2011
DEPARTMENT OF EDUCATION.	Office of Postsecondary Education	Confidential Assistant	DB110099	7/14/2011
	Office of the Secretary	Confidential Assistant	DB110100	7/22/2011
	Office of the Deputy Secretary	Director of Policy and Program Implementation.	DB110093	7/6/2011
	Office of Communications and Outreach.	Confidential Assistant	DB110104	7/22/2011
	Office of the Secretary	Confidential Assistant	DB110107	7/29/2011
	Office of the Secretary	Confidential Assistant	DB110096	7/6/2011
	Office of the Secretary	Confidential Assistant	DB110097	7/6/2011
DEPARTMENT OF ENERGY	Office of Science	Special Assistant	DE110106	7/20/2011
	Office of Management	Lead Advance Representative	DE110120	7/12/2011
	Office of the Deputy Secretary	Senior Advisor	DE110123	7/19/2011
ENVIRONMENTAL PROTECTION AGENCY.	Office of the Administrator	Director of Scheduling and Advance	EP110042	7/13/2011
FEDERAL ENERGY REGULATORY COMMISSION.	Office of the Chairman	Program Analyst	DR110007	7/11/2011
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Office of the Secretary	Special Assistant	DH110113	7/22/2011
	Office of the Secretary	Director of Scheduling and Advance	DH110120	7/22/2011
	Office of Intergovernmental and External Affairs.	Director, Office of External Affairs	DH110115	7/22/2011
	Office of Intergovernmental and External Affairs.	Confidential Assistant	DH110116	7/22/2011

Agency name	Organization name	Position title	Authorization number	Effective date
	Office of Intergovernmental and External Affairs.	Deputy Director, Office of Intergovernmental and External Affairs.	DH110119	7/22/2011
	Office of the Assistant Secretary for Children and Families.	Senior Advisor	DH110111	7/22/2011
	Office of Public Affairs	Special Assistant	DH110110	7/6/2011
	Office of the Assistant Secretary for Health.	Confidential Assistant	DH110112	7/12/2011
DEPARTMENT OF HOMELAND SECURITY.	U.S. Customs and Border Protection	Assistant Commissioner for Public Affairs.	DM110222	7/14/2011
	Office of the Assistant Secretary for Intergovernmental Affairs.	State and Local Coordinator	DM110224	7/14/2011
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.	Office of the Secretary	Special Policy Advisor	DU110023	7/8/2011
	Office of Public Affairs	Deputy Press Secretary	DU110030	7/29/2011
DEPARTMENT OF THE INTERIOR.	Secretary's Immediate Office	Press Secretary	DI110073	7/15/2011
DEPARTMENT OF JUSTICE	Environment and Natural Resources Division.	Counsel	DJ110105	7/29/2011
	Antitrust Division	Senior Counsel	DJ110093	7/6/2011
	Executive Office for United States Attorneys.	Counsel	DJ110098	7/8/2011
	Civil Rights Division	Counsel	DJ110103	7/19/2011
DEPARTMENT OF LABOR	Office of the Deputy Secretary	Policy Advisor	DL110029	7/13/2011
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION.	Office of the Administrator	Senior Advisor	NN110053	7/6/2011
OFFICE OF MANAGEMENT AND BUDGET.	Office of the Director	Confidential Assistant	BO110027	7/19/2011
SECURITIES AND EXCHANGE COMMISSION.	Division of Corporation Finance	Managing Executive	SE110006	7/22/2011
	Office of Compliance Inspections and Examinations.	Confidential Assistant	SE110007	7/22/2011
SMALL BUSINESS ADMINISTRATION.	Office of Native American Affairs	Assistant Administrator for Native American Affairs.	SB110034	7/15/2011
	Office of Government Contracting and Business Development.	Special Advisor for Government Contracting and Business Development.	SB110039	7/28/2011
	Office of Congressional and Legislative Affairs.	Deputy Assistant Administrator for Congressional and Legislative Affairs.	SB110040	7/29/2011
	Office of the Administrator	Senior Advisor	SB110041	7/29/2011
DEPARTMENT OF STATE	Foreign Policy Planning Staff	Staff Assistant	DS110099	7/11/2011
	Office of the Chief of Protocol	Protocol Officer (Visits)	DS110100	7/11/2011
	Office of the Under Secretary for Democracy and Global Affairs.	Special Adviser for Global Youth Issues.	DS110097	7/1/2011
DEPARTMENT OF THE TREASURY.	Under Secretary for International Affairs.	Senior Advisor	DY110120	7/28/2011
	Assistant Secretary (Legislative Affairs)	Special Assistant	DY110116	7/22/2011

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2011–26402 Filed 10–12–11; 8:45 am]

BILLING CODE 6325–39–P

POSTAL REGULATORY COMMISSION

[Docket No. A2011–101; Order No. 894]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Lorraine, New York post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

DATES: *Administrative record due (from Postal Service):* October 14, 2011; *deadline for notices to intervene:* October 31, 2011, 4:30 p.m., eastern time. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the "Filing Online" link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx*. Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on September 29, 2011, the Commission received a petition for review of the Postal Service's determination to close the Lorraine post office in Lorraine, New York. The petition for review was filed by Susan

and Dean Paine (Petitioners) and is postmarked September 20, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2011–101 to consider Petitioners' appeal. If Petitioners would like to further explain their position with supplemental information or facts, Petitioners may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than November 3, 2011.

Issue apparently raised. Petitioners contend that the Postal Service failed to consider the effect of the closing on the community. *See* 39 U.S.C. 404(d)(2)(A)(i).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than the one set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record with the Commission is October 14, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this notice is October 14, 2011.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participants' submissions also will be posted on the Commission's Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at 202–789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

The Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Persons, other than Petitioners and respondent, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before October 31, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by the Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The Postal Service shall file the applicable administrative record regarding this appeal no later than October 14, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than October 14, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Jeremy L. Simmons is designated officer of the Commission (Public Representative) to represent the interests of the general public.

5. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

PROCEDURAL SCHEDULE

September 29, 2011	Filing of Appeal.
October 14, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
October 14, 2011	Deadline for the Postal Service to file any responsive pleading.
October 31, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
November 3, 2011	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
November 23, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
December 8, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
December 15, 2011	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
January 18, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–26432 Filed 10–12–11; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–9266; 34–65512, File No. 265–27]

Advisory Committee on Small and Emerging Companies

AGENCY: Securities and Exchange Commission.

ACTION: Notice of meeting of SEC Advisory Committee on Small and Emerging Companies.

SUMMARY: The Securities and Exchange Commission Advisory Committee on Small and Emerging Companies is providing notice that it will hold a public meeting on Monday, October 31, 2011 in the Multi-Purpose Room, L–006, at the Commission's headquarters, 100 F Street, NE., Washington, DC 20549. The

meeting will begin at 9 a.m. (EDT) and will be open to the public, except for a period of approximately one hour when the Committee will meet in an administrative work session during lunch. The public portions of the meeting will be Web cast on the Commission's Web site at *http://www.sec.gov*. Persons needing special accommodations to take part because of a disability should notify the contact person listed below. The public is invited to submit written statements to the Committee.

The agenda for the meeting includes opening remarks, introduction of Committee members, discussion of the Committee's agenda and organization, and discussion of capital formation issues relevant to small and emerging companies.

DATES: Written statements should be received on or before October 25, 2011.

ADDRESSES: Written statements may be submitted by any of the following methods:

Electronic Statements

- Use the Commission's Internet submission form (*http://www.sec.gov/info/smallbus/acsec.shtml*); or
- Send an e-mail message to *rule-comments@sec.gov*. Please include File Number 265–27 on the subject line; or

Paper Statements

- Send paper statements in triplicate to Elizabeth M. Murphy, Federal Advisory Committee Management Officer, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File No. 265–27. This file number should be included on the subject line if e-mail is used. To help us process and review your statement more efficiently, please use only one method. The Commission will post all statements on the Advisory Committee's Web site (*http://www.sec.gov./info/smallbus/acsec.shtml*).

Statements also will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Room 1580, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All statements received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Johanna V. Losert, Special Counsel, at (202) 551–3460, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: In accordance with Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C.–App. 1, § 10(a), and the regulations thereunder, Meredith B. Cross, Designated Federal Officer of the Committee, has ordered publication of this notice.

Dated: October 7, 2011.

Elizabeth M. Murphy,

Committee Management Officer.

[FR Doc. 2011–26441 Filed 10–12–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65511; File No. 4–639]

Public Roundtable on Execution, Clearance and Settlement of Microcap Securities

AGENCY: Securities and Exchange Commission.

ACTION: Notice of roundtable discussion; request for comment.

SUMMARY: On Monday, October 17, 2011, commencing at 1 p.m. and ending at 5 p.m., staff of the Securities and Exchange Commission ("SEC" or "Agency") will hold a public roundtable meeting at which invited participants will discuss various issues related to the Execution, Clearance and Settlement of Microcap Securities.

The roundtable discussion will be held in the multi-purpose room of the Securities and Exchange Commission headquarters at 100 F Street, NE., in Washington, DC on Monday, October 17, 2011, commencing at 1 p.m. and ending at 5 p.m. The public is invited to observe the roundtable discussion. Seating will be available on a first-come, first-served basis. The roundtable discussion also will be available via webcast on the Commission's Web site at *http://www.sec.gov*.

The roundtable will consist of a series of three panels. Panelists will consider a range of microcap securities topics, such as the current issues facing small cap issuers in the clearance and settlement process, potential regulatory changes impacting the Over-The-Counter markets, and Anti-Money Laundering concerns specific to microcap issuers.

DATES: The roundtable discussion will be held on Monday, October 17, 2011. The Commission will accept comments regarding issues addressed at the roundtable until October 31, 2011.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/other.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number 4–639 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 4–639. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov*). Comments are also available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: The Microcap Roundtable Hotline at (202) 551–6607, Division of Enforcement, Securities and Exchange Commission, 100 F Street, NE., in Washington, DC 20549–7010.

Dated: October 7, 2011.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–26440 Filed 10–12–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65491; File No. SR–CBOE–2011–093]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Customer Large Trade Discount

October 6, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the

"Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 3, 2011, 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 amend the Fees Schedule regarding the Customer Large Trade Discount. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to clarify the process for the qualification of a customer order for the Discount.[3] The Discount is intended to cap fees on large customer trades (the quantity of contracts necessary for a large customer trade to qualify for the Discount varies by product).

The Floor Broker Workstations and PULSe Workstations, as well as any other front end system used to transmit orders to the Exchange (together, the "Workstations") are order repositories into which orders can be entered prior to being sent to CBOEdirect, which is a trade engine through which orders are processed. Sometimes a broker will receive a customer order large enough to qualify for the Discount (a "Large Customer Order") and have to break up the order into a number of smaller orders to trade throughout the day due to lack of available volume when the order originally comes in. When this occurs, the broker sometimes may not first enter the entire order quantity into one of the Workstations (thereby giving the various smaller orders the same order ID), instead breaking up the Large Customer Order himself and entering the smaller orders individually into one of the Workstations or directly into CBOEdirect. Because CBOEdirect cannot link separate orders, if the broker does not first enter the entire order quantity into one of the Workstations before sending the smaller individual orders to CBOEdirect, there is no way for the Exchange to know that all of these smaller orders were part of a Large Customer Order that should qualify for the Discount. The broker can notify the Exchange of this occurrence, and must send documentation, but sometimes the broker fails to do so. When this happens, the customer may not end up getting the Discount. Even when the broker does notify the Exchange that all the small trades were part of a Large Customer Order, if the broker did not enter the entire order in one System, the Exchange must manually go back and review the trade data to verify that all of the small trades were part of one Large Customer Order that would qualify for the Discount.

The Exchange now proposes to improve this process to direct brokers on how to ensure that their Large Customer Orders receive for the Discount. Brokers are directed to enter the entirety of a Large Customer Order that would qualify for the Discount into one of the Workstations (or CBOEdirect, if the broker is not going to break up the Large Customer Order into smaller orders) so that the entire order quantity may be tied to a single order ID. This will allow the Exchange to clearly identify the total size of the order. For a Large Customer Order entered into the CBOEdirect system, merely entering the Large Customer Order, in its entirety, into the CBOEdirect system will still be (and always has been) enough for the Large Customer Order to receive the Discount (though this Large Customer Order will not be able to be broken up into smaller orders).

For any Large Customer Order entered via one of said Workstations that gets broken up into smaller orders prior to being sent to CBOEdirect, the broker must still submit a customer large trade discount request, identifying all necessary information, including the order ID and related trade details, within three days of the transaction. This is necessary because the Exchange only automatically receives order information from CBOEdirect (which we have already explained cannot link the separate smaller orders), so the Exchange needs this information to verify that the smaller orders were part of a Large Customer Order. For the same reason, the Exchange is changing qualification for the Discount to be based on the trade date and order ID on each order (which can be entered into one of the Workstations), as opposed to trade records (which are only produced by CBOEdirect and therefore would not demonstrate that separate smaller orders may be part of a Large Customer Order). Further, for Large Customer Orders sent to the Exchange from a Workstation other than a Floor Broker Workstation or PULSe Workstation (*i.e.*, a Workstation that is not operated through the Exchange) to qualify for the Discount, the Exchange must be granted access to effectively audit such front end system. This is necessary to ensure that such smaller orders sent to the Exchange are indeed part of a Large Customer Order.

The proposed rule change would clear up any confusion regarding the entry and verification of Large Customer Orders and thereby make it easier for brokers to ensure that their Large Customer Orders Qualify for the Discount.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act[4] in general, and furthers the objectives of Section 6(b)(5)[5] of the Act in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. By establishing a clear process for the entry of Large Customer Orders in order for them to qualify for the Discount, the proposed rule change eliminates confusion, thereby removing an impediment to and perfecting the mechanism of a free and open market system. The establishment of this process will also make it easier for CBOE to administer the Discount and ensure that it is appropriately assessed when it is applicable.

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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Fees Schedule, Section 18.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

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) of the Act[6] and subparagraph (f)(2) of Rule 19b–4[7] 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.

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–2011–093 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–2011–093. 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 will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CBOE–2011–093 and should be submitted on or before November 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–26378 Filed 10–12–11; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65495; File No. SR–MSRB–2011–18]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of Amended and Restated Articles of Incorporation of Municipal Securities Rulemaking Board

October 6, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Exchange Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 30, 2011, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The MSRB has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii)[3] of the Exchange Act, and Rule 19b–4(f)(3) 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 MSRB has filed with the SEC a proposed rule change consisting of an Amended and Restated Articles of Incorporation.

The text of the proposed rule change is available on the MSRB's Web site at *http://www.msrb.org/Rules-and-Interpretations/SEC-Filings/2011-Filings.aspx*, at the MSRB's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB 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 Board 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

On September 28, 2011 the Commission approved a proposed rule change consisting of amendments to MSRB Rule A–3, on membership on the Board.[5] The amendments to A–3 established a permanent Board structure of 21 Board members divided into three classes, each class composed of seven members that will serve three-year terms. In addition, amended Rule A–3(h) sets forth a two-year transitional period, commencing October 1, 2012 and ending on September 30, 2014. During this transitional period, two Board Directors who commenced their terms in 2009 and two Board Directors who commenced their terms in 2010 shall serve four-year terms, in order to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(3).

[5] *See* Release No. 34–65424, File No. SR–MSRB–2011–11 (September 28, 2011).

transition the Board of Directors to three equally sized classes.

The proposed rule change would make changes to the Articles of Incorporation as are necessary and appropriate in order to comply with Section 15B of the Exchange Act, 15 U.S.C. 78o–4, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203; § 975, 124 Stat. 1376 (2010) (the "Dodd-Frank Act"), and conform the Articles of Incorporation to amended MSRB Rule A–3.

2. Statutory Basis

Sections 15B(b)(1) and (2) of the Exchange Act,[6] as amended by the Dodd-Frank Act, require, among other things, that the rules of the Board establish fair procedures for the nomination and election of members of the Board and assure fair representation in such nominations and elections of public representatives, broker-dealer representatives, bank representatives, and advisor representatives and the terms that shall be served by such members. The MSRB believes that the proposed rule change is consistent with Section 15B(b)(1) and (2) of the Exchange Act, in that it conforms the Articles of Incorporation of the Board to the requirements of the Dodd-Frank Act and amended MSRB Rule A–3.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB 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, since the proposed rule change simply amends the Articles of Incorporation of the Board to comply with the requirements of the Dodd-Frank Act and MSRB Rule A–3, and solely concerns the administration of the organization.

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 on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Exchange Act[7] and Rule 19b–4(f)(3) thereunder[8] because it is concerned solely with the operation and administration of the MSRB. 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 Exchange Act.[9]

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 Exchange 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–MSRB–2011–18 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–MSRB–2011–18. 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 MSRB's offices. 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–MSRB–2011–18 and should be submitted on or before November 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–26381 Filed 10–12–11; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78o–4(b).

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(3).

[9] *See* Section 19(b)(3)(C) of the Exchange Act, 15 U.S.C. 78s(b)(3)(C).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65493; File No. SR–BYX–2011–028]

Self-Regulatory Organizations; BATS Y–Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees for Use of BATS Y–Exchange, Inc.

October 6, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 30, 2011, BATS Y–Exchange, Inc. (the "Exchange" or "BYX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change 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 amend the fee schedule applicable to Members[5] of the Exchange pursuant to BYX Rules 15.1(a) and (c). While changes to the fee

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

schedule pursuant to this proposal will be effective upon filing, the changes will become operative on October 3, 2011.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify its fee schedule applicable to use of the Exchange effective October 3, 2011, in order to modify pricing related to executions that occur on EDGA EXCHANGE, Inc. ("EDGA") through either a BYX + EDGA Destination Specific Order[6] or through the Exchange's TRIM routing strategy.[7] EDGA is implementing certain pricing changes effective October 3, 2011, including modification of the fee to remove liquidity from $0.0006 per share to $0.0007 per share. To maintain a direct pass through of the applicable cost to execute at EDGA, the Exchange proposes to charge $0.0007 per share for an order routed through its TRIM routing strategy and executed on EDGA. Similarly, because EDGA is part of the Exchange's "One Under" pricing program for Destination Specific Orders, the Exchange intends to continue to charge $0.0001 per share less than if a Member executed an order directly on EDGA. Accordingly, the Exchange proposes to charge $0.0006 per share for an order routed as a Destination Specific Order to EDGA and executed on EDGA, which is $0.0001 per share less than EDGA charges directly. The Exchange's "One Under" pricing does not apply to securities priced below $1.00. In addition, the Exchange will maintain the pricing currently charged by the Exchange for all other Destination Specific Orders.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.[8] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[9] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The Exchange believes that the proposed changes to certain of the Exchange's non-standard routing fees and strategies are competitive, fair and reasonable, and non-discriminatory in that they are equally applicable to all Members and are designed to mirror or provide a discount to the cost applicable to the execution if such routed orders were executed directly by the Member at EDGA Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(ii) of the Act[10] and Rule 19b–4(f)(2) thereunder,[11] the Exchange has designated this proposal as establishing or changing a due, fee, or other charge applicable to the Exchange's Members and non-members, which renders the proposed rule change effective 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–BYX–2011–028 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BYX–2011–028. 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–BYX–2011–028 and should

[6] As defined in BYX Rule 11.9(c)(12).

[7] As defined in BYX Rule 11.13(a)(3)(G).

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

be submitted on or before November 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–26382 Filed 10–12–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65497; File No. SR–BATS–2011–042]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Revenue Sharing Program With Correlix and a Free Trial Period for New Users of the Correlix Service

October 6, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act" or the "Exchange Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 30, 2011, BATS Exchange, Inc. (the "Exchange" or "BATS") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to establish a revenue sharing program with Correlix, Inc. ("Correlix") and a free trial period for new subscribers to the Correlix service.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to establish a revenue sharing program with Correlix. The Exchange has entered into an agreement with Correlix to provide to Users[3] of the Exchange real-time analytical tools to measure the latency of orders to and from the Exchange's system as well as the latency of market data updates transmitted from the Exchange systems to the User. Under the agreement, the Exchange will receive 30% of the total monthly subscription fees received by Correlix from parties who have contracted directly with Correlix to use their RaceTeam latency measurement service for the Exchange. The Exchange will not bill or contract with any Correlix RaceTeam customer directly.

Fees will apply separately for Users of the Exchange's cash equities platform and the Exchange's equity options platform. Pricing for the Correlix RaceTeam product for Users of the Exchange will be based on the number of ports requested by the User for monitoring by Correlix; each "port" is a FIX or binary order entry ("BOE") protocol connection to the Exchange. The fee for equities Users of the Exchange will be an initial $2,500 monthly base fee for the first 25 ports requested by the User for latency monitoring, and an additional $1,000 per month for each additional 25 ports (or portion thereof) requested by the User for latency monitoring. The fee for options Users of the Exchange will be an initial $1,500 monthly fee for the first 25 ports requested by the User for latency monitoring, and an additional $1,000 per month for each additional 25 ports (or portion thereof).

The use of ports as the basis of charging will permit order-related messages transmitted to the Exchange's cash equities platform and the Exchanges equity options platform to be differentiated and kept separate. For these purposes, the combination of port and User ID provides the mechanism for Users to receive latency data for their transactions on each particular Exchange market. The Correlix RaceTeam product will include controls such that Users will not be able to obtain latency information about options orders through an equities port connection and vice versa.

Under the program, the Correlix data collector[4] will see an individualized unique identifier that will allow Correlix RaceTeam to determine round trip order time,[5] from the time the order reaches the Exchange, through the Exchange matching engine, and back out of the Exchange. The RaceTeam product offering does not measure latency outside of the Exchange. The unique identifier serves as a technological information barrier so that the Correlix data collector will only be able to view data for Correlix RaceTeam subscribers related to latency. The Correlix data collector will not see subscriber's individual order detail such as security, price or size. Individual RaceTeam subscribers' logins will restrict access to only their own latency data. The Correlix data collector will see no specific information regarding the trading activity of non-subscribers. The Exchange believes that the above arrangement will provide Users of the Exchange with greater transparency into the processing of their trading activity and allow them to make more efficient trading decisions.

In addition, the Exchange proposes to establish a flexible 60-day free trial so parties will be eligible for one free 60-day trial period of Correlix services whenever they initially elect to sign-up for the service, now or in the future. The Exchange is proposing the flexible trial to ensure that all Correlix subscribers have an equal opportunity to take advantage of an initial free trial period.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A "User" is defined in BATS Rule 1.5(cc) as any member or sponsored participant of the Exchange who is authorized to obtain access to the System.

[4] The Correlix data collector is a Correlix process that receives information from the Exchange that is subsequently taken into Correlix's systems for latency monitoring purposes.

[5] The product measures latency of orders whether the orders are rejected, executed, or partially executed.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes the proposed rule will provide greater transparency into trade and information processing and thus allow market participants to make better-informed and more efficient trading decisions.

In addition, the Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[8] in general, and with Section 6(b)(4) of the Act,[9] 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 that the Exchange operates or controls. In particular, the Exchange notes that it operates in a highly competitive market in which market participants can readily direct orders to competing venues and that use of the Correlix RaceTeam product is completely voluntary. Further, the Exchange will make the RaceTeam product uniformly available pursuant to a standard non-discriminatory pricing schedule offered by Correlix and will offer the free trial period on a uniform and non-discriminatory basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6)(iii) thereunder.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–BATS–2011–042 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BATS–2011–042. 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 Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BATS–2011–042 and should be submitted on or before November 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–26384 Filed 10–12–11; 8:45 am]

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[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65500; File No. SR–BATS–2011–041]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a Definition of Professional and Require That All Professional Orders Be Appropriately Marked

October 6, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 29, 2011, BATS Exchange, Inc. (the "Exchange" or "BATS") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it 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 filed a proposal for the BATS Options Market ("BATS Options") to amend Rule 16.1 (Definitions) to adopt a definition of "Professional" on the Exchange and require that all Professional orders be appropriately marked by Exchange members.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com*, at the principal office of the Exchange, and at

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

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

The purpose of this proposal is to amend Rule 16.1 (Definitions) to adopt a definition of "Professional" on the Exchange and require that all Professional orders be appropriately marked.

This filing is similar to previous filings of NASDAQ OMX BX, Inc. in connection with the rules of the Boston Options Exchange Group, LLC ("BOX"), the Nasdaq Stock Market LLC on behalf of the NASDAQ Options Market ("NOM"), PHLX NASDAQ OMX, Inc. ("Phlx"), the International Securities Exchange, LLC ("ISE"), and Chicago Board Options Exchange, Incorporated, ("CBOE"), which dealt with establishing a new definition of "Professional" as a person or entity that places a certain high volume of orders in listed options per day on average during a calendar month in his or her own beneficial account.[5]

Background

A member of BATS Options is known as an Options Member.[6] This is a firm or organization that is registered with the Exchange pursuant to Chapter XVII of the Exchange's Rules for purposes of participating in options trading on BATS Options as an Options Order Entry Firm or Options Market Maker.[7] Options traded by Options Members (which may include trades on behalf of Public Customers) [8] on BATS Options, a wholly electronic exchange, are electronically executable and routable. The System [9] and rules provide for the ranking, display, and execution of all orders in price/time priority without regard to the status of the person or entity entering an order.[10] The Exchange notes that BATS Options has, similar to BOX and NOM and in contrast to certain other options markets, a "flat" system that does not differentiate for execution or processing purposes among orders on the basis of who or what entity enters an order on the Exchange.[11] The Exchange notes that no change to execution priority on BATS Options is being proposed as part of this rule change.

The Exchange routes orders to other options exchanges ("Away Exchanges") through its affiliate, BATS Trading, Inc. ("BATS Trading"), and through non-affiliated third-party broker-dealers. The Exchange's general routing procedures are set forth in Rule 21.9 (Order Routing), which states in paragraph (c) that, among other things, once routed by the System, an order becomes subject to the rules and procedures of the destination market.[12]

Many other options exchanges, namely the CBOE, ISE, NYSE AMEX, Phlx, NOM and BOX, already have rules that are similar to the Professional designation rule proposed by the Exchange. The above noted exchanges make differentiations based on whether an order is marked Professional or otherwise. Some Options Members, including BATS Trading and the Exchange's third-party routing broker-dealers, are, as noted, also members of other options exchanges that have a Professional designation. As members of these exchanges, such Options Members are subject to their Professional designation rules. And, as mentioned previously, Exchange Rules indicate that orders routed by these broker-dealers become subject to the rules and procedures of the Away Exchanges.[13]

The Exchange believes that disparate rules with respect to Professional order designation, and lack of uniform application of such rules, do not promote the best regulation and may, in fact, encourage regulatory arbitrage.[14] The Exchange believes that it is therefore prudent and necessary to have a Professional designation rule as is commonplace in the industry, particularly where BATS Trading and the Exchange's third-party routing broker-dealers (like other Options Members) are members of several

[5] See Securities Exchange Act Release Nos. 65036 (August 4, 2011), 76 FR 49517 (August 10, 2011) (SR–BX–2011–049); 63028 (October 1, 2010), 75 FR 62443 (October 8, 2010) (SR–NASDAQ–2010–099); 61802 (March 30, 2010), 75 FR 17193 (April 5, 2010) (SR–Phlx–2010–05); 61198 (December 17, 2009), 74 FR 68880 (December 29, 2009)(SR–CBOE–2009–078); and 59287 (January 23, 2009), 74 FR 5694 (January 30, 2009) (SR–ISE–2006–26). A filing by NYSE Amex LLC ("NYSE Amex") proposing a similar Professional designation was based on the Phlx, ISE, and CBOE proposals. See Securities Exchange Act Release No. 61818 (March 31, 2010), 75 FR 17457 (April 6, 2010) (SR–NYSEAmex–2010–18). The cited filings discuss, among other things, the need for a Professional designation to be applied by members of the respective exchanges because the systems of such exchanges differentiate for execution or processing purposes based on order origin. BATS Options, like NOM and BOX, does not differentiate among orders based on their origin.

[6] See Rule 16.1(a)(38). Some Options Members are also members of other options exchanges such as, for example, ISE, CBOE, Phlx, or NOM.

[7] An "Options Order Entry Firm" or "Order Entry Firm" or "OEF" is defined in Rule 16.1(a)(36) as: "those Options Members representing as agent Customer Orders on BATS Options and those non-Market Maker Members conducting proprietary trading." Options Market Maker or Market Maker is defined in Rule 16.1(a)(37) as: "an Options Member registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter XXII of [the Exchange's] Rules."

[8] "Public Customer" is defined in Rule 16.1(a)(46) as: "a person that is not a broker or dealer in securities."

[9] "System" is defined in Rule 16.1(a)(58) as: "the automated trading system used by BATS Options for the trading of options contracts."

[10] See Securities Exchange Act Release No. 61419 (January 26, 2010), 75 FR 5157, 5159 (February 1, 2010) (SR–BATS–2009–031). See also Rule 22.8, which discusses the price/time execution algorithm for System orders and states, in relevant part, that the System will execute trading interest at the best price in the System before executing trading interest at the next best price, and that the System will execute displayed orders before non-displayed orders at the same price.

[11] In contrast to BATS Options, hybrid options exchanges such as, for example, Phlx and CBOE blend auction and electronic market structures that differentiate certain order priority and execution functions based upon, among other things, the origin of the order (e.g., whether the order was a customer, market maker, broker or dealer, firm, or other type of order); these exchanges also charge different fees based on order origin. BATS Options does, like other exchanges, differentiate fees based on order origin. For example, fees for removing liquidity are different for customers than they are for market makers and firms. This filing does not propose any changes in respect of the BATS Options fee structure, though the Exchange does intend to file a proposal separately to adopt fees for Professional orders.

[12] Rule 21:1(b) states: "Orders sent by the System to other options exchanges do not retain time priority with respect to other orders in the System and the System shall continue to execute other orders while routed orders are away at another options exchange. Once routed by the System, an order becomes subject to the rules and procedures of the destination options exchange including, but not limited to, order cancellation. If a routed order is subsequently returned, in whole or in part, that order, or its remainder, shall receive a new time stamp reflecting the time of its return to the System."

[13] Once routed by the System, an order becomes subject to the rules and procedures of the destination market including, but not limited to, order cancellation. See Rule 21.9.

[14] The Exchange believes that the risk of regulatory arbitrage is heightened where not all exchanges have Professional designation rules; and there is a lack of uniformity regarding Professional Rule Exchanges marking orders as Professional when routing such orders away.

exchanges that have rules requiring Professional order designations.

The Proposal

The Exchange proposes new Rule 16.1(a)(45) to state that the term "Professional" means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). Moreover, in order to properly represent orders entered on the Exchange according to the new definition, an Options Member will be required to appropriately mark all Professional orders.[15] To comply with this requirement, Options Members will be required to review their Public Customers' activity on at least a quarterly basis to determine whether orders that are not for the account of a broker-dealer should be represented as Professional orders.[16] Upon publication of the notice regarding this proposal, the Exchange will issue a notice to Options Members providing them at least ten business days notice of the procedures for the implementation of the proposal.

The Professional definition proposed by BATS Options is similar to the Professional designation that has been adopted by BOX, NOM, Phlx, ISE, CBOE, and NYSE Amex.[17] As noted, the Professional definition will not impact the Exchange's price/time order entry (priority) system.[18] Instead, the Exchange's proposal will ensure that Options Members mark their Professional orders properly, that is, similarly in terms of Professional order identification regardless of whether the order is placed on BATS Options or some other another of the options exchanges with a Professional designation. Moreover, with the proposed Professional designation in place, the Exchange will be able to accept orders that are marked Professional.[19]

The designation of an order as a Professional order would not result in any different treatment of such order for purposes of BATS Options rules concerning away order protection or routing to Away Exchanges. That is, all non broker or dealer orders, including those that meet the definition of Professional orders, would continue to be treated as Public Customers for purposes of the Exchange's rules regarding order protection and routing to Away Exchanges.[20]

The Exchange believes that identifying Professional accounts based upon the average number of orders entered in qualified accounts is an appropriately objective approach that will reasonably distinguish such persons and entities from retail investors or market participants. The Exchange proposes the threshold of 390 orders per day on average over a calendar month, because it believes that this number far exceeds the number of orders that are entered by retail investors in a single day.[21] Moreover, the 390 orders per day threshold proposed by the Exchange directly corresponds to the daily order volume recognized by Phlx, NOM, ISE, and other options exchanges that have, as previously discussed, established Professional order designations.[22] In addition, basing the standard on the number of orders that are entered in listed options for a qualified account(s) assures that Professional account holders cannot inappropriately avoid the purpose of the rule by spreading their trading activity over multiple exchanges, and using an average number over a calendar month will prevent gaming of the 390 order threshold.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[23] in general, and furthers the objectives of Section 6(b)(5) of the Act[24] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, by defining Professional and indicating that all Professional orders shall be appropriately marked by Options Members. The Exchange believes that the proposal is particularly consistent with Section 6(b)(5) of the Act,[25] with respect to removal of impediments to, and perfection the mechanism of, a free and open market and a national market system, because the proposed changes will provide for consistent regulation for Options Members that are members of other SROs with analogous rules, as described above.

Further, the Exchange believes that disparate rules regarding Professional order designation, and a lack of uniform application of such rules, do not promote the best regulation and may, in fact, encourage regulatory arbitrage. The Exchange believes that it is therefore prudent and necessary to have a Professional designation rule as is commonplace in the industry, particularly where BATS Trading or the Exchange's third-party routing broker-dealers (like other Options Members) are members of several exchanges that

[15] The Exchange intends to require Members to identify Professional orders submitted electronically, and will separately notify its Members regarding this requirement.

[16] Members will be required to conduct a quarterly review and make any appropriate changes to the way in which they are representing orders within five business days after the end of each calendar quarter. While Members will only be required to review their accounts on a quarterly basis, if during a quarter the Exchange identifies a customer for which orders are being represented as other than Professional orders but that has averaged more than 390 orders per day during a month, the Exchange will notify the Member and the Member will be required to change the manner in which it is representing the customer's orders within five business days. This is similar to the process of other options exchanges that have adopted a Professional designation. *See, e.g.*, Securities Exchange Act Release No. 61802 (March 30, 2010), 75 FR 17193 (April 5, 2010) (SR–Phlx–2010–05).

[17] *See* supra note 5.

[18] For example, unlike the Phlx proposal (which, among other things, discusses that Professional orders on Phlx will be treated in the same manner as off-floor brokers in terms of certain priority rules), the Exchange's proposal does not address or impact any priority relationship for Professional as opposed to other BATS Options orders.

[19] Currently, BATS Options only accepts orders that are marked as customer, firm, or market maker. While the Exchange does not intend to differentiate among Professional and other orders for priority purposes, it may, in the future, feel that it is appropriate to differentiate its routing or other fees in respect of Professional as opposed to other orders; and if so, the Exchange intends to file an appropriate fee-related rule filing(s). The Exchange does not address its fee structure in the present filing.

[20] *See, e.g.*, Rule 21.9 and Chapter XXVII.

[21] 390 orders is equal to the total number of orders that a person would place in a day if that person entered one order every minute from market open to market close. Many of the largest retail-oriented electronic brokers offer lower commission rates to customers they define as "active traders." Publicly available information from the Web sites of Charles Schwab, Fidelity, TD Ameritrade and OptionsXpress all define "active trader" as someone who executes only a few options trades per month. The highest required trading activity to qualify as an active trader among these four firms was 35 trades per quarter. *See* note 11 of Securities Exchange Act Release No. 57254 (February 1, 2008), 73 FR 7345, 7347 (SR–ISE–2006–26) (which also notes that a study of one of the largest retail-oriented options brokerage firms indicated that on a typical trading day, options orders were entered with respect to 5,922 different customer accounts. There was only one order entered with respect to 3,765 of the 5,922 different customer accounts on this day, and there were only 17 customer accounts with respect to which more than ten orders were entered. The highest number of orders entered with respect to any one account over the course of an entire week was 27).

[22] The similarity of the Exchange's proposed Professional order definition to that of other options exchanges is important from the regulatory perspective, that is from a desire to promote a national market system that minimizes regulatory arbitrage.

[23] 15 U.S.C. 78f(b).

[24] 15 U.S.C. 78f(b)(5).

[25] *Id.*

have rules requiring Professional order designations. The designation of Professional orders would not result in any different treatment of such orders for purposes of the Exchange's Rules concerning order protection or routing to Away Exchanges. That is, all non broker or dealer orders, including those that meet the definition of Professional orders, would continue to be treated as Public Customers for purposes of the Exchange's Rules regarding order protection and routing to Away Exchanges. As such, the Exchange believes the proposed rule change is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [26] and Rule 19b–4(f)(6)(iii) thereunder.[27]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–BATS–2011–041 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BATS–2011–041. 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 will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BATS–2011–041 and should be submitted on or before November 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–26437 Filed 10–12–11; 8:45 am]

BILLING CODE 8011–01–P

[26] 15 U.S.C. 78s(b)(3)(A).

[27] 17 CFR 240.19b–4(f)(6).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65502; File No. SR–ISE–2011–63]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Retire a Pilot Program and To Harmonize ISE's Rules Regarding Listing Expirations With the Existing Rules of Other Exchanges

October 6, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on September 26, 2011, the International Securities Exchange, LLC ("ISE" or "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 its rules to retire a pilot program and to harmonize ISE's rules regarding listing expirations with the existing rules of other exchanges. The text of the proposed rule change is available on the Exchange's Web site *http://www.ise.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to retire the Additional Expiration Months Pilot Program ("Pilot Program") and to amend ISE's rules regarding listing expirations. This filing is based on the existing rules of other options exchanges.[3]

ISE Rules Governing Listing of Expirations

Pursuant to ISE Rule 504(e), ISE typically opens four expiration months for each class of options open for trading on the Exchange: the first two being the two nearest months, regardless of the quarterly cycle on which that class trades; the third and fourth being the next two months of the quarterly cycle previously designated by the Exchange for that specific class. Notwithstanding Rules 504(a) and 504(c), which presumably provide ISE with the flexibility to add additional expiration months, ISE has historically interpreted Rule 504(e) conservatively and viewed it to allow a maximum number of expirations that may be listed.

In 2010, the Exchange established the Pilot Program pursuant to which ISE could list up to an additional two expiration months, for a total of six expiration months for each class of option open for trading on the Exchange.[4] CBOE subsequently established a similar pilot program.[5]

After ISE and CBOE established their respective pilot programs, ISE submitted a filing in response to a PHLX filing regarding the listing of expirations.[6] In the PHLX filing, PHLX amended its rules so that it could open "at least one expiration month" for each class of standard options open for trading on PHLX.[7] PHLX stated in its filing that this amendment was "based directly on the recently approved rules of another options exchange, namely Chapter IV, Sections 6 and 8" of NOM. Since PHLX's rules did not hard code an upper limit on the maximum number of expirations that may be listed per class, ISE believed that PHLX (and NOM) had the ability of list expirations that ISE would not be able to list under its rules. As a result, ISE amended its rules by adding Supplementary Material .10 to Rule 504 and Supplementary Material .04 to Rule 2009 to permit ISE to list additional expiration months on options classes opened for trading on ISE if such expiration months are opened for trading on at least one other national securities exchange.[8]

Retire Additional Expiration Months Pilot and Adopt Amended Rules

ISE initially established the Pilot Program because it did not believe it had the ability to list more than four expirations per class when an options class is opened for trading on the Exchange. Now that ISE has the ability to match the expiration listings of other exchanges[9] (that may exceed six expirations and may occur on a regular basis) the Exchange believes that the Pilot Program is no longer necessary and is proposing to retire it. To affect this change, the Exchange is proposing to delete Supplementary Material .08 to Rule 504, which sets forth the terms of the Pilot Program, and which is currently scheduled to expire on October 31, 2011.

In addition, ISE's ability to match the expirations listed by other exchanges is set forth in Supplementary Material .10 to Rule 504. This provision, however, only provides ISE with the ability the match expirations initiated by other options exchanges. To encourage competition and to place ISE on a level playing field, the Exchange should have the same ability as PHLX, NOM and CBOE to initiate expirations. Therefore, ISE is proposing to harmonize its rules with the rules of PHLX, NOM and CBOE by clarifying that ISE will open at least one expiration month and one series for each class opened for trading on the Exchange. To affect this change, the Exchange is proposing to amend the text of Rule 504(b) to track the rule text of NOM Chapter IV, Section 6, PHLX Rule 1012 and CBOE Rule 5.5 and to delete Rule 504(e).

Finally, the Exchange is proposing to slightly modify Rule 504 regarding the opening of additional series. Specifically, the Exchange proposes to amend Rule 504(c) to permit the listing of additional series when (among other reasons) the market price of the underlying stock moves more than five strike prices from the initial exercise price or prices.[10] Currently, Rule 504(c) permits the listing of additional series when the market price of the underlying stock moves substantially from the initial exercise price or prices. This proposed rule change again tracks PHLX, NOM and CBOE's existing rule text.

The Exchange believes the proposed rule change is proper, and indeed necessary, in light of the need to have rules that do not put the Exchange at a competitive disadvantage. ISE's proposal puts the Exchange in the same position as PHLX, NOM and CBOE and provides the Exchange with the same ability to initiate and match identical expirations across exchanges for products that are multiply-listed and fungible with one another. The Exchange believes that the proposed rule change should encourage competition and be beneficial to traders and market participants by providing them with a means to trade on the Exchange securities that are initiated by the Exchange and listed and traded on other exchanges.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act")[11] and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.[12] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[13] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the proposed rule change will permit the Exchange to accommodate requests made by its Members and other market participants

[3] *See* NASDAQ Options Market ("NOM") Chapter IV, Section 6 (Series of Options Contracts Option for Trading), NASDAQ OMX PHLX, LLC ("PHLX") Rule 1012 (Series of Options Listed for Trading) and Chicago Board Options Exchange ("CBOE") Rule 5.5 (Series of Option Contracts Open for Trading). *See also* Securities Exchange Act Release Nos. 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR–NASDAQ–2007–004 and NASDAQ–2007–080) and 63700 (January 11, 2011) 76 FR 2931 (January 18, 2011) (SR–PHLX–2011–04). The PHLX filing was based on NOM's existing rules.

[4] *See* Securities Exchange Act Release No. 63104 (October 14, 2010), 75 FR 64773 (October 20, 2010) (SR–ISE–2010–91).

[5] *See* Securities Exchange Act Release No. 63185 (October 27, 2010), 75 FR 67419 (November 2, 2010) (SR–ISE–CBOE–2010–97).

[6] *See* Securities Exchange Act Release No. 64343 (April 26, 2011), 76 FR 24546 (May 2, 2011) (SR–ISE–2011–26).

[7] *See id.* at 24546–24547.

[8] *See id.* at 24547.

[9] *See* Supplementary Material .10 to ISE Rule 504.

[10] Rule 504(c) also permits ISE to add additional series of options of the same class when the Exchange deems it necessary to maintain an orderly market and to meet customer demand. These "additional series" provisions are similar to existing provisions in NOM Chapter IV, Section 6, PHLX Rule 1012 and CBOE Rule 5.5.

[11] 15 U.S.C. 78s(b)(1).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

to list additional expiration months and thus encourages competition without harming investors or the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[14] and Rule 19b–4(f)(6) thereunder.[15]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal should promote competition by allowing the Exchange, without undue delay, to incorporate rules that previously have been adopted by other exchanges and thereby to list and trade option series that are trading on those other options exchanges. Therefore, the Commission designates the proposal operative upon filing.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–ISE–2011–63 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2011–63. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2011–63 and should be submitted on or before November 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–26439 Filed 10–12–11; 8:45 am]

BILLING CODE 8011–01–P

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[16] 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).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65503; File No. SR–ISE–2011–60]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by International Securities Exchange, LLC to Expand the Short Term Options Series Program

October 6, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 23, 2011, the International Securities Exchange, LLC ("ISE" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules to expand the Short Term Option Series Program. The text of the proposed rule change is available on the Exchange's Web site *http://www.ise.com*, at the principal office of the Exchange, at the Commission's Public Reference Room, and at the Commission's Web site at *http://www.sec.gov*.

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 self-regulatory organization has prepared summaries, set forth in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend ISE Rules 504 and 2009 to expand the Short Term Option Series Program ("STOS Program")[3] so that the Exchange may select twenty-five option classes to participate in the STOS Program[4] and list a total of 30 Short Term Option Series ("STOS Options") for each option class that participates in the Exchange's STOS Program.[5]

The STOS Program is codified in Supplementary Material .02 to ISE Rule 504 and Supplementary Material .01 to ISE Rule 2009. These rules state that after an option class has been approved for listing and trading on the Exchange, the Exchange may open for trading on any Thursday or Friday that is a business day series of options on no more than fifteen option classes that expire on the Friday of the following business week that is a business day. In addition to the fifteen-option class limitation, there is also a limitation that no more than twenty series for each expiration date in those classes that may be opened for trading.[6] Furthermore, the strike price of each short term option has to be fixed with approximately the same number of strike prices being opened above and below the value of the underlying security at about the time that the short term options are initially opened for trading on the Exchange, and with strike prices being within thirty percent (30%) above or below the closing price of the underlying security from the preceding day. The Exchange does not propose any changes to the STOS Program limitations other than to increase from fifteen to twenty-five the number of option classes that may be opened pursuant to the STOS Program and increase from 20 to 30 the number of Weekly Series that may be opened for each class of option selected to participate in the STOS Program.

The principal reason for the proposed expansion to the number of classes is customer demand for adding, or not removing, short term option classes from the STOS Program. In order that the Exchange not exceed the fifteen-option class restriction, from time to time the Exchange has had to discontinue trading one short term option class before it could begin trading other option classes within the STOS Program. This has negatively impacted investors and traders, particularly retail public customers. These same market participants also repeatedly request that the Exchange add additional classes to the STOS Program which the Exchange is unable to do as it has already reached its maximum allotment of 15 classes. The Exchange notes that the STOS Program has been well received by market participants, in particular by retail investors. The Exchange believes a modest increase to the number of classes that may participate in the STOS Program, such as the one proposed herein, will permit the Exchange to meet increased customer demand and provide market participants with the ability to hedge in a greater number of option classes.

The principal reason for the proposed expansion to the number of series is market demand for additional series in STOS Options classes in which the maximum number of series (20) has already been reached. Specifically, the Exchange has observed increased demand for more series when market moving events, such as corporate events and large price swings, have occurred during the life span of an affected STOS Options class. Currently, in order to be able to respond to market demand, the Exchange is forced to delete or delist certain series in order to make room for more in demand series.[7] The Exchange finds this method to be problematic for two reasons.

First, the Exchange has received requests to keep series that it intends to delete/delist to make room for more in demand series. While market participants may access other markets for the deleted/delisted series, the Exchange would prefer that market participants trade these series at ISE. Second, this method can lead to competitive disadvantages among exchanges. If one exchange is actively responding to market demand by deleting/delisting and adding series, if another exchange is the last to list the less desirable series with open interest, that exchange is stuck with those series and unable to list the in demand series (because to do so would result in more than 20 series being listed on that exchange). As a result, the maximum number of series per class of options that participate in the STOS Program should be increased to 30 so that exchanges can list the full panoply of series that other exchanges list and which the market demands.

To affect this change, the Exchange is proposing to amend its rules to limit the initial number of series that may be opened for trading to 20 series and to limit the number of additional series that may be opened for trading to 10 series.

With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and represents that it and the Options Price Reporting Authority ("OPRA") have the necessary systems capacity to handle the potential additional traffic associated with trading an expanded number of classes and series in the STOS Program.

The Exchange believes that the STOS Program has provided investors with greater trading opportunities and flexibility and the ability to more closely tailor their investment and risk management strategies and decisions. The Exchange further believes this proposed rule change will provide investors with additional short term option classes and series for investment, trading, and risk management purposes.

Finally, the Commission has requested, and the Exchange has agreed for the purposes of this filing, to submit one report to the Commission providing an analysis of the STOS Program (the

[3] The Exchange adopted the STOS Program on a pilot basis in 2005. *See* Securities Exchange Act Release No. 52012 (July 12, 2005), 70 FR 41246 (July 18, 2005) (SR–ISE–2005–17). The STOS Program was approved on a permanent basis in 2010. *See* Securities Exchange Act Release No. 62444 (July 2, 2010), 75 FR 39595 (July 9, 2010) (SR–ISE–2010–72).

[4] The Exchange previously increased the total number of option classes that may participate in the STOS Program from 5 to fifteen (15). *See* Securities Exchange Act Release No. 63878 (February 9, 2011), 76 FR 8796 (February 15, 2011) (SR–ISE–2011–08).

[5] The Exchange previously increased the total number of series per STOS Options from 7 to 20 series. *See* Securities Exchange Act Release No. 62444 (July 2, 2010), 75 FR 39595 (July 9, 2010) (SR–ISE–2010–72).

[6] However, if the Exchange opens less than twenty (20) short term options for a Short Term Option Expiration Date, additional series may be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying security moves substantially from the exercise price or prices of the series already opened. Any additional strike prices listed by the Exchange shall be within thirty percent (30%) above or below the current price of the underlying security. The Exchange may also open additional strike prices of Short Term Option Series that are more than 30% above or below the current price of the underlying security provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate or individual customers or their brokers (market-makers trading for their own account shall not be considered when determining customer interest under this provision). Supplementary Material .02(d) to Rule 504 and Supplementary Material .01(d) to Rule 2009.

[7] The Exchange deletes series with no open interest and delists series with open interest if those series are open for trading on another exchange.

"Report"). The Report will cover the period from July 2, 2010, the date the Exchange first began to list and trade short term options, through August 31, 2011. The Report will describe the Exchange's experience with the STOS Program in respect of the option classes included by the Exchange in the STOS Program. The Report will be submitted to the Commission on a confidential basis under separate cover.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934[8] (the "Act") in general, and furthers the objectives of Section 6(b)(5) of the Act[9] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange believes that expanding the current short term options program will result in a continuing benefit to investors by giving them more flexibility to closely tailor their investment decisions and hedging decisions in greater number of securities. The Exchange believes that expanding the current program would provide the investing public and other market participants increased opportunities because an expanded program would provide market participants additional opportunities to hedge their investment thus allowing these investors to better manage their risk exposure. While the expansion of the STOS Program will generate additional quote traffic, the Exchange does not believe that this increased traffic will become unmanageable since the proposal remains limited to a fixed number of classes. Further, the Exchange does not believe that the proposed rule change will result in a material proliferation of additional series because it is limited to a fixed number of series per class and the Exchange does not believe that the additional price points will result in fractured liquidity. Moreover, the Exchange believes the proposed rule change would benefit investors by giving them more flexibility to closely tailor their investment decisions in a greater number of securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be 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–ISE–2011–60 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2011–60. 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 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 publicly available. All submissions should refer to File Number SR–ISE–2011–60 and should be submitted on or before November 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–26438 Filed 10–12–11; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65499; File No. SR–ISE–2011–64]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Professional Customer Fees

October 6, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 26, 2011, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission the proposed rule change, as described in Items I and II below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to amend its Schedule of Fees relating to certain professional customer orders executed on the Exchange. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

ISE proposes to increase the execution fee for "professional customers," who execute orders as a result of taking liquidity from ISE's order book in certain option classes, from $0.18 per contract to $0.20 per contract. This proposed fee change is applicable to option classes that are not subject to the Exchange's modified maker/taker pricing structure ("Non-Select Symbols"). In addition to the Non-Select Symbols, this proposed fee change shall also apply to non-complex orders in option classes that are in the Penny Pilot program.[3]

ISE rules distinguish between Priority Customer Orders[4] and Professional Orders.[5] For purpose of this discussion, "professional customers" are non-broker/dealer participants who enter at least 390 orders per day on average during a calendar month for their own beneficial account(s). The Exchange notes that the level of trading activity by professional customers more resembles that of broker/dealers, i.e., proprietary traders, than it does of a retail, or "Priority" customer. As a result, professional customers are on parity with broker/dealers and generally pay the same transaction fees as broker/dealers. For example, for years broker/dealer orders have been charged an execution fee of $0.20 per contract in the Non-Select Symbols. And recently, the Exchange began charging professional customers who execute orders as a result of posting liquidity to ISE's order book in the Non-Select Symbols $0.20 per contract.[6]

With this proposed fee change, the Exchange seeks to standardize the fee charged to professional customers for trading on the Exchange in the Non-Select Symbols as all professional customers will now pay $0.20 per contract, regardless of whether they are posting liquidity or taking liquidity in the Non-Select Symbols and for non-complex orders in option classes that are in the Penny Pilot program. The Exchange believes that the proposed fees for professional customers will allow the Exchange to remain competitive with other options exchanges who apply fees to professional customers. Further, in addition to standardizing theses [sic] fees, the Exchange believes the proposed fee change will make the Exchange's transaction fees simpler and more concise to Exchange Members.

The Exchange has designated this proposal to be operative on October 3, 2011.

2. Statutory Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(4) of the Act[8] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members. The Exchange believes that the proposed fee changes will generally allow the Exchange to better compete for professional customer order flow and thus enhance competition. Specifically, the Exchange believes that its proposal to assess a $0.20 per contract fee for professional customers who take liquidity from the Exchange's order book in the Non-Select Symbols and for non-complex orders in option classes that are in the Penny Pilot program is equitable and reasonable as it will standardize fees charged by the Exchange for all professional customers that engage in a similar activity. The Exchange further believes it is reasonable, equitable and not unfairly discriminatory to charge professional customers the same level of fees that the Exchange charges broker/dealers as both groups of market participants essentially engage in similar trading activity.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act[9] and Rule 19b–4(f)(2)[10] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[3] The Exchange recently extended its maker/taker pricing structure to all complex orders in option classes that are in the Penny Pilot program. *See* Exchange Act Release No. 65021 (August 3, 2011), 76 FR 48933 (August 9, 2011) (SR–ISE–2011–45). The Penny Pilot program, which commenced on January 26, 2007, permits ISE and all of the other options exchanges to quote certain option classes in pennies. *See* Exchange Act Release No. 55161 (January 24, 2007), 72 FR 4754 (February 1, 2007) (SR–ISE–2006–62). The current pilot is scheduled to expire on December 31, 2011. *See* Exchange Act Release No. 63437 (December 6, 2010), 75 FR 77032 (December 10, 2010) (SR–ISE–2010–116).

[4] A Priority Customer is defined in ISE Rule 100(a)(37A) as a person or entity that is not a broker or dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

[5] A Professional Order is defined in ISE Rule 100(a)(37C) as an order that is for the account of a person or entity that is not a Priority Customer.

[6] *See* Securities Exchange Act Release No. 61434 (January 27, 2010), 75 FR 5826 (February 4, 2010).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(2).

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–ISE–2011–64 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2011–64. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2011–64 and should be submitted on or before November 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–26436 Filed 10–12–11; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65496; File No. SR–BYX–2011–027]

Self-Regulatory Organizations; BATS Y–Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Revenue Sharing Program With Correlix and a Free Trial Period for New Users of the Correlix Service

October 6, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act" or the "Exchange Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 30, 2011, BATS Y–Exchange, Inc. (the "Exchange" or "BYX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to establish a revenue sharing program with Correlix, Inc. ("Correlix") and a free trial period for new subscribers to the Correlix service.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to establish a revenue sharing program with Correlix. The Exchange has entered into an agreement with Correlix to provide to Users[3] of the Exchange real-time analytical tools to measure the latency of orders to and from the Exchange's system as well as the latency of market data updates transmitted from the Exchange systems to the User. Under the agreement, the Exchange will receive 30% of the total monthly subscription fees received by Correlix from parties who have contracted directly with Correlix to use their RaceTeam latency measurement service for the Exchange. The Exchange will not bill or contract with any Correlix RaceTeam customer directly.

Pricing for the Correlix RaceTeam product for Users of the Exchange will be based on the number of ports requested by the User for monitoring by Correlix; each "port" is a FIX or binary order entry ("BOE") protocol connection to the Exchange. The fee for Users of the Exchange will be an initial $1,500 monthly fee for the first 25 ports requested by the User for latency monitoring, and an additional $1,000 per month for each additional 25 ports (or portion thereof).

Under the program, the Correlix data collector[4] will see an individualized unique identifier that will allow Correlix RaceTeam to determine round trip order time,[5] from the time the order reaches the Exchange, through the Exchange matching engine, and back out of the Exchange. The RaceTeam product offering does not measure latency outside of the Exchange. The unique identifier serves as a technological information barrier so that the Correlix data collector will only be able to view data for Correlix RaceTeam subscribers related to latency. The Correlix data collector will not see subscriber's individual order detail such as security, price or size. Individual RaceTeam subscribers' logins will restrict access to only their own latency data. The Correlix data collector will see

[3] A "User" is defined in BYX Rule 1.5(cc) as any member or sponsored participant of the Exchange who is authorized to obtain access to the System.

[4] The Correlix data collector is a Correlix process that receives information from the Exchange that is subsequently taken into Correlix's systems for latency monitoring purposes.

[5] The product measures latency of orders whether the orders are rejected, executed, or partially executed.

no specific information regarding the trading activity of non-subscribers. The Exchange believes that the above arrangement will provide Users of the Exchange with greater transparency into the processing of their trading activity and allow them to make more efficient trading decisions.

In addition, the Exchange proposes to establish a flexible 60-day free trial so parties will be eligible for one free 60-day trial period of Correlix services whenever they initially elect to sign-up for the service, now or in the future. The Exchange is proposing the flexible trial to ensure that all Correlix subscribers have an equal opportunity to take advantage of an initial free trial period.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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 Exchange believes the proposed rule will provide greater transparency into trade and information processing and thus allow market participants to make better-informed and more efficient trading decisions.

In addition, the Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[8] in general, and with Section 6(b)(4) of the Act,[9] 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 that the Exchange operates or controls. In particular, the Exchange notes that it operates in a highly competitive market in which market participants can readily direct orders to competing venues and that use of the Correlix RaceTeam product is completely voluntary. Further, the Exchange will make the RaceTeam product uniformly available pursuant to a standard non-discriminatory pricing schedule offered by Correlix and will offer the free trial period on a uniform and non-discriminatory basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6)(iii) thereunder.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–BYX–2011–027 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BYX–2011–027. 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 Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BYX–2011–027 and should be submitted on or before November 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–26385 Filed 10–12–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65494; File No. SR–BATS–2011–044]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees for Use of BATS Exchange, Inc.

October 6, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 30, 2011, BATS Exchange, Inc. (the "Exchange" or "BATS") filed with the Securities and Exchange

[6] 15 U.S.C. 78f(b).
[7] 15 U.S.C. 78f(b)(5).
[8] 15 U.S.C. 78f.
[9] 15 U.S.C. 78f(b)(4).
[10] 15 U.S.C. 78s(b)(3)(A).
[11] 17 CFR 240.19b–4(f)(6).
[12] 17 CFR 200.30–3(a)(12).
[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.

Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change 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 amend the fee schedule applicable to Members[5] and non-members of the Exchange pursuant to BATS Rules 15.1(a) and (c). While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on October 3, 2011.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify the "Equities Pricing" section of its fee schedule effective October 3, 2011, in order to modify pricing related to executions that occur on EDGA EXCHANGE, Inc. ("EDGA") through the Exchange's TRIM routing strategy.[6] EDGA is implementing certain pricing changes effective October 3, 2011, including modification of the fee to remove liquidity from $0.0006 per share to $0.0007 per share. To maintain a direct pass through of the applicable cost to execute at EDGA, the Exchange proposes to charge $0.0007 per share for an order routed through its TRIM routing strategy and executed on EDGA.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.[7] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[8] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The Exchange believes that the proposed change to one of the Exchange's non-standard routing fees and strategies is competitive, fair and reasonable, and non-discriminatory in that it is equally applicable to all Members and is designed to mirror the cost applicable to the execution if such routed orders were executed directly by the Member at EDGA Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(ii) of the Act[9] and Rule 19b–4(f)(2) thereunder,[10] the Exchange has designated this proposal as establishing or changing a due, fee, or other charge applicable to the Exchange's Members and non-members, which renders the proposed rule change effective 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–BATS–2011–044 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BATS–2011–044. 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

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

[6] As defined in BATS Rule 11.13(a)(3)(G).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BATS–2011–044 and should be submitted on or before November 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–26383 Filed 10–12–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65492; File No. SR–CBOE–2011–095]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule To Delete Erroneous Language With Respect to the SPX Tier Appointment

October 6, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 3, 2011, 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 amend its Fees Schedule to delete erroneous language from the section discussing SPX Tier Appointment fees. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule to delete erroneous language from the section discussing SPX Tier Appointment fees. The Fees Schedule currently states that the "SPX Tier Appointment fee will be assessed to any Market-Maker Trading Permit Holder that * * * conducts any open outcry transactions in SPX or any open outcry or electronic transaction in SPX Weeklys at any time during a calendar month." This means that a Market-Maker Trading Permit Holder that does not have an SPX tier appointment could still be charged the SPX Tier Appointment fee for conducting any electronic transaction in SPX Weeklys. However, because Market-Makers cannot trade electronically in SPX without a tier appointment, it would be impossible to assess this fee to a Market-Maker Trading Permit Holder that does not have an SPX tier appointment but conducts any electronic transaction in SPX Weeklys. Indeed, the Exchange has never charged the SPX Tier Appointment fee in this circumstance (it would be impossible to do so), and the inclusion of such possibility on the Fees Schedule was an error. The Exchange therefore would like to delete such statement from the Fees Schedule and alleviate any confusion.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act[3] in general, and furthers the objectives of Section 6(b)(5)[4] of the Act in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, by alleviating confusion regarding the impossible imposition of the SPX Tier Appointment fee on a Market-Maker Trading Permit Holder who does not hold an SPX tier appointment but conducts electronic transactions in SPX Weeklys.

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) of the Act[5] and subparagraph (f)(2) of Rule 19b–4[6] 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.

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–2011–095 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary,

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(2).

Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2011–095. 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 will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CBOE–2011–095 and should be submitted on or before November 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–26380 Filed 10–12–11; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12858 and #12859]

New York Disaster Number NY–00113

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of New York (FEMA–4031–DR), dated 09/23/2011.

Incident: Remnants of Tropical Storm Lee.

Incident Period: 09/07/2011 through 09/11/2011.

Effective Date: 10/04/2011.

Physical Loan Application Deadline Date: 11/22/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 06/25/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of New York, dated 09/23/2011, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Ulster.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–26483 Filed 10–12–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12770 and #12771]

Puerto Rico Disaster Number PR–00015

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 4.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the Commonwealth of Puerto Rico (FEMA–4017–DR), dated 08/27/2011.

Incident: Hurricane Irene.

Incident Period: 08/21/2011 through 08/24/2011.

Effective Date: 10/04/2011.

Physical Loan Application Deadline Date: 10/26/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 05/28/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the Commonwealth of Puerto Rico, dated 08/27/2011, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Municipalities: Patillas.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–26505 Filed 10–12–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12848 and #12849]

Texas Disaster Number TX–00382

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Texas (FEMA–4029–DR), dated 09/21/2011.

Incident: Wildfires.

Incident Period: 08/30/2011 and continuing.

Effective Date: 10/04/2011.

Physical Loan Application Deadline Date: 11/21/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 06/21/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Texas, dated 09/21/2011, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Cherokee, Gregg, Harrison, Houston, Rusk.

All other information in the original declaration remains unchanged.

[7] 17 CFR 200.30–3(a)(12).

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–26508 Filed 10–12–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12807 and #12808]

Pennsylvania Disaster Number PA–00043

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the Commonwealth of Pennsylvania (FEMA–4025–DR), dated 09/03/2011.

Incident: Hurricane Irene.

Incident Period: 08/26/2011 through 08/30/2011.

Effective Date: 10/04/2011.

Physical Loan Application Deadline Date: 11/02/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 06/05/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for private non-profit organizations in the Commonwealth of Pennsylvania, dated 09/03/2011, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Bucks, Lehigh, Monroe, Montgomery.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–26500 Filed 10–12–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12824 and #12825]

New York Disaster Number NY–00110

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 4.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of New York (FEMA–4031–DR), dated 09/13/2011.

Incident: Remnants of Tropical Storm Lee.

Incident Period: 09/07/2011 through 09/11/2011.

Effective Date: 10/04/2011.

Physical Loan Application Deadline Date: 11/14/2011.

EIDL Loan Application Deadline Date: 06/13/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of New York, dated 09/13/2011 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Oneida, Ulster, Orange.

Contiguous Counties: (Economic Injury Loans Only):

New Jersey: Passaic, Sussex.

New York: Columbia, Dutchess, Lewis, Oswego, Putnam, Rockland, Westchester.

Pennsylvania: Pike.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–26484 Filed 10–12–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12872 and #12873]

Delaware Disaster #DE–00010

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Delaware (FEMA–4037–DR), dated 09/30/2011.

Incident: Hurricane Irene.

Incident Period: 08/25/2011 through 08/31/2011.

Effective Date: 09/30/2011.

Physical Loan Application Deadline Date: 11/29/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 07/02/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 09/30/2011, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Kent, Sussex.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-profit Organizations with Credit Available Elsewhere ...	3.250
Non-profit Organizations without Credit Available Elsewhere ...	3.000
For Economic Injury:	
Non-profit Organizations without Credit Available Elsewhere ...	3.000

The number assigned to this disaster for physical damage is 128728 and for economic injury is 128738.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–26498 Filed 10–12–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12736 and #12737]

Missouri Disaster Number MO–00052

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Missouri (FEMA–4012–DR), dated 08/12/2011.

Incident: Flooding.

Incident Period: 06/01/2011 through 08/01/2011.

Effective Date: 10/05/2011.

Physical Loan Application Deadline Date: 11/10/2011.

EIDL Loan Application Deadline Date: 05/14/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Missouri, dated 08/12/2011 is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 11/10/2011.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–26487 Filed 10–12–11; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 7642]

Culturally Significant Objects Imported for Exhibition Determinations: "Johan Zoffany RA: Society Observed"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition "Johan Zoffany RA: Society Observed," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Yale Center for British Art, New Haven, Connecticut, from on or about October 27, 2011, until on or about February 12, 2012, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: October 6, 2011.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–26400 Filed 10–12–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 7640]

Culturally Significant Objects Imported for Exhibition Determinations: "Anglo-Saxon Hoard: Gold From England's Dark Ages"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition "Anglo-Saxon Hoard: Gold From England's Dark Ages," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the National Geographic Society, Washington, DC, from on or about October 29, 2011, until on or about March 4, 2012, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: October 6, 2011.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–26399 Filed 10–12–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 7646]

Culturally Significant Objects Imported for Exhibition Determinations: "Diego Rivera: Murals for the Museum of Modern Art"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition "Diego Rivera: Murals for The Museum of Modern Art," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Museum of Modern Art, New York, NY, from on or about November 13, 2011, until on or about May 14, 2012, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The

mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: October 7, 2011.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–26518 Filed 10–12–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 7645]

Culturally Significant Objects Imported for Exhibition Determinations: "Aphrodite and the Gods of Love"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition "Aphrodite and the Gods of Love," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Museum of Fine Arts, Boston, MA, from on or about October 26, 2011, until on or about February 20, 2012; at the J. Paul Getty Museum at the Getty Villa, Pacific Palisades, CA, from on or about March 28, 2012, until on or about July 9, 2012; at the San Antonio Museum of Art, San Antonio, TX, from on or about September 15, 2012, until on or about February 17, 2013, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: October 6, 2011.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–26519 Filed 10–11–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 7643]

In the Matter of the Designation of Conspiracy of Fire Nuclei, aka Conspiracy of the Nuclei of Fire, aka Conspiracy of Cells of Fire, aka Synomosia of Pyrinon Tis Fotias, aka Thessaloniki-Athens Fire Nuclei Conspiracy, as a Specially Designated Global Terrorist Pursuant to Section 1(b) of Executive Order 13224, as Amended

Acting under the authority of and in accordance with section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, and Executive Order 13284 of January 23, 2003, I hereby determine that the organization known as Conspiracy of Fire Nuclei, also known as Conspiracy of the Nuclei of Fire, also known as Conspiracy of Cells of Fire, also known as Synomosia of Pyrinon Tis Fotias, also known as Thessaloniki-Athens Fire Nuclei Conspiracy, has committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that "prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously," I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: September 28, 2011.

Hillary Rodham Clinton,

Secretary of State.

[FR Doc. 2011–26367 Filed 10–12–11; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2010–0109]

Petition for Waiver of the Terms of the Order Limiting Scheduled Operations at LaGuardia Airport

ACTION: Notice of grant of petition with conditions.

SUMMARY: The Secretary and the Federal Aviation Administration (FAA) are granting the joint waiver request of Delta Air Lines, Inc. (Delta) and US Airways, Inc. (US Airways) (together, the Joint Applicants or the carriers) from the prohibition on purchasing operating authorizations (slots) at LaGuardia Airport (LGA). The waiver permits the carriers to consummate a transaction in which US Airways would transfer to Delta 132 slot pairs (265 slots) at LGA. In exchange, Delta would transfer to US Airways 42 slot pairs (84 slots) at Ronald Reagan Washington National Airport (DCA), convey route authority to operate certain flights to São Paulo, Brazil, and make a cash payment to US Airways. The waiver is subject to a number of conditions, including that the carriers dispose of 16 slots at DCA and 32 slots at LGA to eligible new entrant and limited incumbent carriers, pursuant to procedures set out in this Notice, and achieve a mutually satisfactory agreement regarding gates and associated facilities with any such purchaser.

DATES: The waiver is effective October 13, 2011.

FOR FURTHER INFORMATION CONTACT: Rebecca MacPherson, Assistant Chief Counsel for Regulations, by telephone at (202) 267–3073 or by electronic mail at *rebecca.macpherson@faa.gov*.

SUPPLEMENTARY INFORMATION:

The Proposed Transaction and the Waiver Request

The FAA limits the number of scheduled and unscheduled operations during peak hours at LGA pursuant to an Order that was originally published in December 2006 and that has been extended several times since (the Order).[1] The Order allocates operating

[1] Operating Limitations at New York LaGuardia Airport, 71 FR 77,854 (Dec. 27, 2006); 72 FR 63,224 (Nov. 8, 2007) (transfer, minimum usage, and withdrawal amendments); 72 FR 48,428 (Aug. 19, 2008) (reducing the reservations available for unscheduled operations); 74 FR 845 (Jan. 8, 2009) (extending the expiration date through Oct. 24, 2009); 74 FR 2,646 (Jan. 15, 2009) (reducing the peak-hour cap on scheduled operations to 71); 74 FR 51,653 (Oct. 7, 2009) (extending the expiration date through Oct. 29, 2011); 76 FR 18,616 (Apr. 4,

authorizations (commonly known as slots) to carriers and establishes rules for the use and operation of slots. The Order allows temporary leases and trades of slots between carriers, provided that they do not extend beyond the duration of the Order.[2] Most importantly for purposes of this waiver request, the Order does not permit the purchase and sale of slots at LGA. The only way for a carrier to sell or purchase a slot at LGA is through a waiver of the Order.

A different legal regime governing slots exists at DCA. The High Density Rule (HDR)[3] limits scheduled and unscheduled operations there. The HDR permits carriers to sell or purchase slots at DCA freely with only FAA confirmation of the transaction.

On May 23, 2011, the Joint Applicants submitted a joint request for a limited waiver from the prohibition on purchasing slots at LGA. The carriers requested the waiver to allow them to consummate a transaction in which US Airways would transfer to Delta 132 slot pairs (265 slots) at LGA, and Delta would transfer to US Airways 42 pairs (84 slots) at DCA, together with route authority to operate certain flights to São Paulo, Brazil, and make a cash payment to US Airways.

FAA's Tentative Determination

On July 21, 2011 the FAA issued a Notice of petition for waiver and solicited comments on the proposed grant of the petition with conditions, through August 29 in this Docket. 76 FR 45,313 (July 28, 2011). In that notice, we tentatively approved the proposed transaction subject to certain conditions (July 2011 Notice).[4] At that time, we tentatively found that the proposed transaction offered important benefits to the public. At the same time, we were concerned that the proposed transaction could have an adverse impact on competition because of the reduction in competition between the two carriers and their increased market share at the two airports, among other factors.[5] We evaluated the public interest in this transaction, examining both the benefits that were likely to be attained and the possible adverse consequences that could result from the proposed transaction, and tentatively concluded that the waiver should be granted with certain conditions.

To mitigate the competitive harms that may accrue from the transaction, we proposed conditions that included the divestiture of 32 slots at LGA (16 arrival and 16 departure) and 16 slots at DCA, by a blind, cash-only sale through an FAA-managed Web site, to limited incumbent and new entrant carriers having fewer than five percent of the total slot holdings at DCA and LGA respectively, and that do not code share to or from DCA or LGA with any carrier that has five percent or more slot holdings. We also proposed that carriers eligible to purchase the divested slots not be subsidiaries, either partially or wholly owned, of a company whose combined slot holdings are equal to or greater than five percent at DCA or LGA respectively.[6]

We proposed that the carriers notify the FAA as to whether they intend to proceed with the transaction and, if they do, that they provide certain information regarding the slots to be divested. We also proposed that the FAA would post a notice of the available slot bundles on a Web site and provide for eligible carriers to register to purchase the slot bundles. The FAA would assign each registered bidder a random number, so no information identifying the bidder would be available to the seller or public. A bidder would be allowed to indicate its preference ranking for each slot bundle as part of its offer. The FAA would specify a bid closing date and time. All offers to purchase slot bundles would be sent to the FAA electronically; offers would have to include the prospective purchaser's assigned number, the monetary amount, and the preference ranking for that slot bundle. The FAA would review the offers for each bundle and would post all offers on the Web site as soon as practicable after they are received. Each purchaser would be able to submit multiple offers until the closing date and time.

Additionally, to allow the new entrant and limited incumbent carriers purchasing the divested slots to establish competitive service, we proposed to prohibit both Delta and US Airways from operating any of the newly acquired slots during the first 90 days after the closing date of the sale of the divested slots and from operating more than 50 percent of the total number of slots included in the Joint Applicants' Agreement between the 91st and the 210th day following the close date of the sale of the divested slots, after which time the transferee would be free to operate the remainder of the slots.

To enable purchasing carriers to achieve a critical mass of slots, we also proposed to package the slots into bundles of 8 slot pairs. (Thus, there would be two slot bundles at LaGuardia of 8 pairs each, and one slot bundle at Reagan National consisting of 8 pairs.) An eligible carrier may, under our proposal, purchase only one slot bundle at each airport (while indicating preference ranking for each slot bundle as part of its offer). However, should one carrier make the highest bid on both bundles at LaGuardia, we proposed that the seller would have the option of accepting both high bids, thus overriding the one bundle per carrier proposal.

We further proposed that the slots purchased in the auction would be subject to the same minimum usage requirements as provided in the LGA Order and HDR, that is, 80% over a two-month reporting period. The minimum usage would be waived, however, for six months following purchase to allow the purchaser to begin service in new markets or add service to existing markets. Additionally, we proposed that the purchaser may lease the acquired slots to the seller until the purchaser is ready to initiate service to maximize operations at the airports. However, we would require that the slots not be sold or leased to other carriers during the 12 months following purchase because the purchaser must hold and use the acquired slots.

The July 2011 Notice invited interested parties to submit their comments by August 29, 2011. The comments we received are summarized in the Appendix. We grant all motions for leave to file late comments, and all comments to date were accepted into the docket.

2009 Proposed Transaction and Waiver Request

This petition for waiver follows a prior joint waiver request by the same Joint Applicants.

On August 24, 2009, US Airways and Delta requested a waiver of the Order to allow a similar transaction to proceed. We responded to that petition in a

2011) (extending the expiration date until the effective date of the final Congestion Management Rule for LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport, but not later than Oct. 26, 2013).

[2] As previously noted, the Order expires upon the effective date of the final Congestion Management Rule at LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport, but not later than October 26, 2013.

[3] 14 CFR part 93, subparts K and S.

[4] 76 FR 45313.

[5] 76 FR at 45315.

[6] We proposed an exception from the subsidiaries rule for Frontier Airlines, which while wholly-owned by Republic has a discretely different low-cost carrier business plan, and whose operations were confirmed to be consistent with LCC yields. 76 FR at 45328.

February 2010 Notice,[7] in which we tentatively found that the transaction should not proceed unless the Joint Applicants made more slots available for new entrants. Based on our analysis of competitive factors present at that time, we proposed to approve the transaction subject to the Joint Applicants disposing of 20 slot pairs (40 slots) at LGA and 14 pairs (28 slots) at DCA. Extensive comments were received, including from the Joint Applicants. After review of the comments, we granted the waiver request in a Notice dated May 11, 2010 (May 2010 Notice), subject to the conditions set forth in the February 2010 Notice.[8] Delta and US Airways did not choose to go forward with the transaction subject to our proposed conditions, but instead appealed our decision to the U.S. Court of Appeals for the D.C. Circuit.[9]

2011 Proposed Transaction

The transaction as now proposed by the carriers is structurally similar to the transaction proposed in 2009. The carriers have presented the Department with an analysis of the benefits they assert will accrue from the transaction, and claimed that changes in the economy and structure of the aviation industry at DCA and LGA since 2010 have dramatically reduced the economic harms that we viewed as potential adverse consequences of the original transaction.

Among those changes are the market penetration of low-cost carriers (LCCs) at both DCA and LGA. The carriers state that JetBlue, AirTran, and Frontier have increased the number of LCC slots at DCA by 46, thereby increasing the LCC slots at that airport from 3.3% to 8.6%, exceeding the 6.5% share that would have been obtained under the divestiture terms of our May 2010 Notice. At LGA, the carriers point out that Frontier, AirTran, and Southwest recently acquired slots, for a net increase of 18 LCC slots, increasing the LCC slot share from 6.8% to 8.5%, closer to the 10.3% LCC slot share sought in our May 2010 Notice. The carriers also state that the Southwest/AirTran merger will intensify competition in these markets.

Furthermore, the carriers assert that the recent United/Continental merger enhanced United's competitive profile at both Newark Liberty International Airport (EWR) and Washington Dulles International Airport, as well as at LGA and DCA. Delta also states that this transaction will allow it to establish a hub at LGA and address the competitive advantage secured by American Airlines/British Airways through their antitrust immunity alliance.

Statutory Authority To Grant Waiver Subject to Slot Divestitures

The Secretary and the Administrator have authority to grant the requested waiver of the LaGuardia Order, and to grant the waiver subject to certain conditions.[10] The FAA is authorized to grant an exemption when the Administrator determines the "exemption is in the public interest." 49 U.S.C. 40109. The Administrator may "modify or revoke an assignment [of the use of airspace]" when required in the public interest. 49 U.S.C. 40103(b)(1). Courts have upheld the conditions an agency may place on its approval of a transaction to meet public interest standards.[11]

Our decision to subject the Joint Applicants' waiver request to certain slot divestitures is consistent with, and carries out, the Department's Section 40101(a) pro-competitive public interest factors.[12] It also complies with the FAA's public interest goals and objectives. Congress did not preclude the FAA Administrator from considering the "public interest" to include factors beyond "safety," "national defense" and "security." Rather, Congress expressly directed the FAA Administrator to consider those matters "among others." Accordingly, as we articulated in our February 2010, May 2010, and July 2011 Notices, the FAA may validly consider, as being in the "public interest," "other factors" including the fostering of competition in the context of the slot program. The "public interest" includes policies furthering airline competition, as provided in 49 U.S.C. 40101(a)(4), (6), (9), (10), (12)–(13) and (d). These goals have been public policy since at least the time of adoption of the Airline Deregulation Act of 1978, Public Law 95–504 (92 Stat. 1705), and they include (among others) maximizing reliance on competitive market forces; avoiding unreasonable industry concentration and excessive market domination; and encouraging entry into air transportation markets by new carriers.

The Proposed Transaction Serves the Overall Public Interest, Although Divestitures Remain Necessary To Remedy Prospective Harms

In the context of our public interest analysis here, we evaluate the prospective economic benefits of the transaction together with any potential resulting adverse economic consequences. We have not determined that no economic harm would result from the transaction, but rather that the adverse consequences that could otherwise result can be sufficiently mitigated such that overall benefits can be realized.

As noted above, the Joint Applicants contend that approval of the slot swap would enable both carriers to more efficiently operate at the airports and permit more passengers and destinations to be served, thus creating tangible benefits to consumers. They argue that efficiencies will occur through upgauging of aircraft size at both LGA and DCA, thereby increasing throughput and competition while reducing congestion and delay. In addition, they contend that the facilities transfer will enable Delta to create a seamless hub at LGA, expand competition and capacity, and preserve and enhance small community access at both LGA and DCA.

Most commenters did not object to the Joint Applicants' overall transaction *per se*, and a number supported it as proposed by the carriers. For example, the New York Travel Advisory Bureau and a number of travel agents and corporate travel managers doing business in New York expressed support for the Joint Applicants' waiver request, generally citing the potential for greater benefits to the economy of New York, the benefit of improvements proposed for the infrastructure at LaGuardia, and prospects for improved tourism and travel opportunities.

[7] Notice of a Petition for Waiver of the Terms of the Order Limiting Scheduled Operations at LaGuardia, 75 FR 7306 (Feb. 18, 2010).

[8] Notice on Petition for Waiver of the Terms of the Order Limiting Scheduled Operations at LaGuardia Airport, 75 FR 26,322 (May 11, 2010).

[9] *Delta Air Lines and US Airways* v. *FAA and U.S. Dep't of Trans.*, Case #10–1153 (D.C. Cir. filed Jul. 2, 2010). On May 25, 2011, the U.S. Court of Appeals dismissed this suit by mutual agreement of the parties.

[10] Petition for Waiver of the Terms of the Order Limiting Scheduled Operations at LaGuardia Airport, 75 FR at 7307; 75 FR at 26,324–25; 76 FR at 45,313–14. The Order was issued under the FAA's authority to "develop plans and policy for the use of the navigable airspace and assign by regulation or order the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace." 49 U.S.C. 40103(b)(1).

[11] *See South Dakota* v. *Dole*, 483 U.S. 203, 208 (1987) ("The Federal Government may establish and impose reasonable conditions relevant to Federal interest * * * and to the over-all objectives thereto"); *N.Y. Cent. Sec. Corp.* v. *United States*, 287 U.S. 12 (1932) (upholding Interstate Commerce Commission order approving the acquisition of the "Big Four" railroad companies by N.Y. Central upon the condition that it also acquire short line railroads on certain terms).

[12] Neither the Joint Applicants nor other carriers arguing against the waiver conditions cite any cases prohibiting the Secretary or Administrator from considering pro-competitive objectives as being in the public interest.

However, other comments, especially from other air carriers, point to the potential adverse competitive impacts of increased hub operations at DCA and LGA. In particular, Southwest Airlines Co., citing a report prepared for it by Campbell-Hill Aviation Group, LLC, argues that the transaction would permit Delta and US Airways to "squander public resources" by using their larger slot holdings to establish hubs at LGA and DCA that will be dependent on an even larger number of small regional aircraft feeder flights to establish and maintain hub operations.[13] Southwest maintains that hub development at these slot-controlled airports would only reinforce the inefficient slot utilization already in place that could best be remedied by supporting divestitures to carriers that would efficiently operate slots with large aircraft to support and benefit local Washington and New York passengers. Moreover, Southwest contends that the consequences for the public of this proposed reallocation of markets would be higher fares, less competition, and fewer service options at both airports.[14]

While we acknowledge Southwest's claims regarding potential inefficiencies resulting from hub development at slot controlled airports, we must consider both potential operating inefficiencies and expected network benefits typically resulting from hub development or expansion. The Joint Applicants claim that numerous benefits will accrue to consumers as a result of their transaction. Among the more compelling benefits that they articulate, we are most convinced by their arguments that development of a LGA hub will lead to enhanced service to small communities (even with the small aircraft that Southwest contends would be used) and improved competition versus other east coast hubs, including United's Newark hub and US Airways' hub in Philadelphia.

In terms of preserving and enhancing small community access at LGA and DCA, the Dane County Regional Airport, serving Madison, WI, expresses support for the overall transaction, but maintains concern that the nonstop service from Madison to LGA and DCA, currently provided by Delta, could be discontinued if Delta were required to divest some of its slots to other carriers. In addition, a number of Virginia interests express concern about the overall transaction, focusing on the possibility of losing established nonstop Roanoke-LaGuardia service and other reductions in travel options at Virginia airports. Mayor Bowers of Roanoke, and various other businesses, educational institutions, and private citizens note that US Airways currently serves Roanoke from LaGuardia with three daily roundtrips, service that could be eliminated if the transaction were allowed to proceed.

We agree that grant of the waiver will lead to some alterations in the Delta and US Airways service patterns and capacity per departure, or average throughput. However, the carriers have asserted that primary benefits of the transaction will include enhanced service to smaller communities on an overall basis.

In evaluating the public interest in this waiver petition, we have carefully assessed the benefits and possible adverse consequences of the transaction, seeking a balanced and proportional approach to maintain or enhance access to small communities and to provide greater efficiencies for Delta and US Airways that they will in turn pass on to consumers. As we acknowledged in the Final Notice concerning the Joint Applicants' initial proposal, the transaction does raise concerns as to levels of airport concentration, the number of monopoly or dominant markets in which increased pricing power can be exercised, and the potential for use of the transferred slots in an anticompetitive manner.[15] However, as we believed then, the appropriate remedy for us to adopt is not to deny the petition but rather to require divestitures that address those concerns. We believe the transaction's promised benefits for the public—particularly in light of the increased penetration of low cost carriers at the airports since the time of our last review—are sufficient for us to conclude that grant of the requested waiver with specified remedies is in the public interest.

Adequacy of These Divestitures To Address the Transaction's Prospective Harms

The Department's July 2011 Notice, proposing to grant Delta's and US Airways' renewed request for a waiver subject to the condition that, among other things, the carriers divest 16 slot pairs at LGA and 8 slot pairs at DCA, was premised on the view that circumstances had in fact changed at the affected airports since the time of our initial review.[16] Several airlines in competition with the Joint Applicants argue that circumstances have not changed substantially enough to merit approval of the waiver request, and that, in any event, the Department was aware of these circumstances when it issued the July 2011 Notice. Believing the proposed slot remedy to be inadequate, some commenters—including Southwest, Jet Blue, Frontier, and Spirit, as well as ACAA—further urge us to require the divestiture of roughly 30% more slots, as we did under different circumstances in our initial review.

In our initial review of the proposed 2009 transaction, we concluded that the concern about anti-competitive effects was compounded by the fact that LCCs—which create the most competitive impact by their ability to dramatically lower fares and increase the volume of passengers in a market—had only a limited presence at the affected airports. The Department's May 2010 Notice, and the divestitures it would have required, were premised on data recited in the Notice finding that collectively, LCCs had only 3.3% of slot interest holdings at DCA and 6.8% at LGA.[17] The Department was aware at that time of JetBlue's transaction with American Airlines to acquire its first DCA slots,[18] but JetBlue's service was not initiated until November of 2010,[19] six months after the Final Notice was issued. Our review and assessment of the needed number of divestitures was focused on actual, not planned, service, recognizing the fact that agreements can be modified and plans can change.

Southwest also argued that DOT must have been "fully aware" at the time of the Final Notice of the "Republic to Frontier" transaction, involving 18 slots at DCA and 13 at LGA.[20] However, the announcement was not made until mid-April 2010 that Midwest Airlines (which had been acquired by Republic) would begin flying under the Republic name, with the Midwest brand being phased out in 2011.[21] And, regardless of the announcement, it was uncertain at that time whether the Midwest operations assumed by Frontier would be marketed with yields consistent with LCC operations, so it would have been premature to then count Frontier's new slots as representing LCC slot increases.

The third major change in circumstances was the AirTran-

[13] Comments of Southwest Airlines Co., FAA Docket 2010–0109 at pp. 13–14 and Exhibit WN–115.

[14] *Id.*, at 4–8.

[15] 75 FR at 26,324 (May 11, 2010).

[16] 76 FR 45,315.

[17] 75 FR 26,323.

[18] *See* 75 FR 26,323, n. 11, and 76 FR 45,315–45,316.

[19] *See* Comments of JetBlue, FAA Docket 2010–0109, Aug. 30, 2011 at 6.

[20] *See* Comments of Southwest Airlines, FAA Docket 2010–0109 at p. 6.

[21] *See, e.g.*, Milwaukee Sentinel-Journal, "JSOnline," *http./www.jsonline.com/business/90750954.html*, April 13, 2010.

Southwest merger, which was not announced until the Fall of 2010, well after the May 2010 issuance of the Final Notice. Given the size of the transaction and its potential to introduce Southwest's brand, passenger loyalty, and route network to a broader array of customers, this merger is an important changed circumstance that could not have been considered in May 2010 but must be considered now.[22]

In our subsequent review, the Department focused on actual LCC penetration and determined that the LCC shares at the affected airports had increased markedly. At DCA it had gone from a *de minimis* share of 3.3% to 8.5%; at LGA it increased modestly from 6.9% to 8.2%.[23] These changes in LCC holdings, notably the addition of a new competitor at DCA in JetBlue and the larger portfolio of a merged Southwest/AirTran, portend a gradual shift in the competitive dynamics. While the changed circumstances between our initial and subsequent reviews fall well short of addressing all concerns at the affected airports, they are significant and cannot be overlooked. The changes show that LCCs have gained a competitive beach head at DCA and LGA that is not likely to be reclaimed any time soon.

Aside from the timing of the events, the Department also considered the magnitude of the changed circumstances. We supplied evidence to show that our reliance on LCC penetration to discipline fares justified a departure from the initial decision. For example, in the July 28, 2011 Notice, we determined that average weighted yields, used as a proxy for fares, had decreased in the DCA–BOS market as a result of JetBlue's entry in 2010, and had continued to decrease in the LGA–IND market following AirTran's entry in 2009.[24] At DCA, we supplied data and analysis to show that fares across all markets had fallen.[25] The commenters do not challenge these data. Their opposition to the remedy now being proposed focuses on the number of LCC holdings as a percentage of total holdings. However, we view the increasing levels of LCC penetration and the associated favorable effects on fares across a number of markets as more significant, and these important developments support our decision to allow the slot swap to proceed so long as there is an appropriate divestiture of slots auctioned in sufficient numbers to qualified new entrants or limited incumbents to mitigate the potential competitive harm resulting from the transaction.

A number of commenters contend that we could do more to enhance competition at both these airports than we proposed last July, by requiring more slots to be divested. However, in the particular circumstances of this case, we believe it appropriate for us to proceed with a remedy that reallocates only the number of slots necessary to address the competitive harm caused by the transaction, while still preserving the benefits of the transaction.

Our approach focuses on the incremental competitive change and the potentially strong effect of new entrant competition that is possible with a critical mass of slots. It does not address pre-existing conditions that affect competition at the airports and, in all likelihood, would continue to affect competition even if we required 30% more slots to be divested. Stated another way, our objective has not been to add as much new service by new entrants and limited incumbents as possible but rather to rely to the maximum extent on the introduction of a critical mass of new services, anticipating that those services will have an oversized effect on competition across a number of markets sufficient to address the potential competitive harm resulting from the transaction. The Department laid a foundation for this approach by emphasizing the effect of new entrant/LCC services on prices across a number of markets. That foundation is not in dispute. Seen in this light, the final slot remedy need not necessarily be mathematically congruent with the increased LCC penetration, as commenters suggest. The remedy is proportional and effective to address the possible adverse consequences of the transaction, while still preserving its public benefits.

Southwest asserts that the remedy must be larger because the transaction will "permanently lock out" low-fare competition.[26] Southwest claims that it will be virtually impossible for LCCs to expand at these airports because already-scarce slots will become even less available, and after the transaction is consummated, Delta and US Airways will become the most logical high bidders for any slots that may come on the market.[27] Southwest's assertions do not take into account the full competitive landscape. While it is true that Delta and US Airways will significantly increase their presence at LGA and DCA, respectively, they will not be the only carriers with the resources to acquire new slots, which are still likely to become available over time, as they have thus far. Southwest and other carriers have cash on hand, as well as developed route networks and other assets that can be leveraged for greater access to LGA and DCA.

In summary, we believe the approach taken in the July 28 Notice remains appropriate under the current circumstances, and is justified by recent changes in the competitive and operating environments at DCA and LGA.

Carrier Eligibility for the Divested Slots

Some commenters, including JetBlue and Virgin America, assert that we may not direct the Joint Applicants to divest certain DCA and LGA slots to new entrant and limited incumbent carriers having fewer than five percent of the total slot holdings at the respective airports, because the "below five percent" threshold is contrary to statutory definitions of limited incumbents or otherwise outside the scope of the FAA's statutory authority. We disagree. As an initial matter, the FAA routinely imposes special conditions that must be met in order to either assure an equivalent level of safety (not an issue in this case) or to ensure that the public interest is met. Nothing in the Administrator's authority to issue exemptions prevents the FAA from tailoring those conditions to the circumstances surrounding the exemption request. In the context of the July 2011 Notice, we used the term "limited incumbent" in a generic sense to mean an airline with a limited, or small, presence at the airport. We intend, of course, to provide opportunities for competition and low-fare service at DCA and LGA by allowing such carriers, as well as new entrant airlines, to purchase divested slots.

[22] Southwest argued as well that a few smaller transactions affecting LCC presence at Reagan National or LaGuardia had occurred prior to the May 4, 2010 Final Notice that the Department must have known about but did not raise until the July 2011 Notice was issued in connection with the Joint Applicants' revised proposal. The largest of these was a trade of slots between Continental and AirTran: AirTran operated the slots but Continental remained the holder. We generally looked at holdings in the Final Notice but subsequently refined our analysis to include operations as appropriate in the July 2011 Notice. In any event, the Department clearly specified in the Tables in the July 2011 Notice the distribution of slots actually considered in the May 2010 Notice and the origin for each change that was reported. *See* Table 5 at 76 FR 45,323 and Table 6 at 76 FR 45,325.

[23] *See* 76 FR 45323–45325. *See also* 76 FR 45327. Due to minor inconsistencies in rounding, the May 11, 2010 Notice indicated that the pre-transaction LCC share at LGA was 6.8%, while the July 28, 2011 Notice indicated a 6.9% share.

[24] *See* 76 FR 45,327.

[25] *See* 76 FR 45,327.

[26] Comments of Southwest Airlines Co., Docket 2010–0109 at 4 (Aug. 29, 2011).

[27] *Id.*, at 6.

We are not obliged to confine the category of air carriers eligible to purchase slots to those "limited incumbent air carriers" holding or operating "fewer than 20" slots or slot exemptions, as JetBlue suggests. Rather, that statutory definition of "limited incumbent" (49 U.S.C. 41714(h)(5)) applies only to specific circumstances not relevant here.[28] The "limited incumbent" definition applies, for example, to the Secretary's criteria for awarding within-perimeter slot exemptions at DCA. 49 U.S.C. 41718(b)(1). The definition also applies to the FAA's High Density Rule (HDR) protocols for withdrawing slots and distributing slots in a lottery at DCA. 14 CFR 93.213(a)(5), 93.223(c)(3), 93.225(h). Neither the statutory nor regulatory definitions of "limited incumbent" cabin the Department's authority to promote the public interest. The Department has determined that fashioning a reasonable class of carriers that may purchase divested slots for purposes of providing competition at congested airports is an appropriate and proportionate remedy in these circumstances.

Moreover, Congress' directive to the Secretary to grant certain slot exemptions to new entrant or limited incumbent carriers at LGA and JFK expired upon the January 1, 2007 statutory termination of the HDR at those airports. 49 U.S.C. 41716(b), 41715(a)(2). The Department is under no statutory or regulatory directive to apply the "fewer than 20" threshold to determine the class of carriers eligible to purchase the divested slots in this proceeding.

In the Department's February 2010 Notice, in connection with the Joint Applicant's initial request, we proposed the use of a five percent threshold, because carriers having slot holdings above that point provide a minimum level of competitive service sufficient to affect pricing in the market.[29] Restricting eligibility to new and smaller carriers below that threshold would help attract carriers that offered the prospect of increased efficiencies and innovations, as well as the ability to increase throughput at the airports, so long as they had a sufficient number of slots to establish sustainable patterns of service.[30] Moreover, use of a 5% standard, rather than setting the threshold at a lower level, would enlarge the number of potential competitors for the divested slots, creating a more robust market for them and a greater likelihood that the awarded slots would be utilized in an efficient and effective manner.

The "five percent rule" is the same as that adopted in the May 2010 Notice in which we granted the joint waiver request of the carriers conditioned on divesting certain LGA and DCA slots to eligible new entrant and limited incumbent carriers, which we defined as those:

> having fewer than five percent of total slot holdings at DCA and/or LGA, do not code share to or from DCA or LGA with any carrier that has five percent or more slot holdings, and are not subsidiaries, either partially or wholly owned, of a company whose combined slot interest holdings are equal to or greater than five percent at LGA and/or DCA.

75 FR at 26,337.

JetBlue also states that our definition of carriers eligible to purchase divested LGA slots unlawfully ignores a purported statutory mandate to make up to 20 LGA slot exemptions available to new entrants and limited incumbents.[31] In making this argument, JetBlue claims that the "interim slot rules at New York airports," enacted by Congress in the Wendell H. Ford Aviation Investment Reform Act of 2000 (AIR–21), entitled all new entrant and limited incumbent carriers to receive up to 20 LGA slot exemptions. 49 U.S.C. 41716(b). JetBlue suggests that the divestiture must first favor those carriers with less than 20 slots before offering an opportunity for those with more than 20 slots to purchase the divested slots.

AIR–21 expired at LGA along with the HDR. Any articulation of Congressional purpose in enacting AIR–21 simply no longer applies at LGA. Thus, we reject JetBlue's argument for the reasons set forth above. In addition, JetBlue's reading of Section 41716(b) is overly generous to the new entrant/limited incumbents. This provision did not entitle each applicant to 20 LGA slot exemptions, as JetBlue claims. Rather, it directed the Secretary, subject to procedures set out in Section 41714(i), to grant slot exemptions to new entrants or limited incumbents at LGA "if the number [ ] granted * * * does not exceed 20 * * *." 49 U.S.C. 41716(b). In other words, it prohibited the Secretary from granting the LGA slot exemptions described in Section 41716(a) to any carrier whose LGA slots and slot exemptions would total more than 20.

JetBlue and Virgin America also comment on Frontier's eligibility. Our July 2011 Notice tentatively found that Frontier, a carrier with limited holdings at DCA and LGA, would qualify as an eligible bidder for slots.[32] We explained that it was appropriate for Frontier to bid even though it was wholly-owned by Republic, which holds more than 5% of slots at DCA. The Department noted that Frontier has a unique business plan and relationship in the Republic structure, and confirmed that its yields have remained consistent with those of LCCs.

JetBlue and Virgin America contend that Frontier should not be eligible. JetBlue's argument centered on the assertion that the Department must restrict bidding to carriers with 20 or fewer slots, and that Frontier is owned by a carrier whose slot holdings far exceed the "20 or fewer" threshold.[33] The "20 or fewer" issue was addressed above. Virgin America also cites Frontier's ownership as a concern, but suggests that it would be too difficult for the Department to monitor whether Frontier's business plan was, in fact, delivering lower fares as intended.[34]

However, Frontier's inclusion in the pool of eligible bidders is consistent with our objective of crafting a remedy to mitigate the loss of competition associated with the Delta/US Airways slot swap. Frontier operates as a separate business within the Republic corporate structure, with a low-cost carrier business plan and yields consistent with low-cost operations. Republic's other slots are pledged for use on a long term basis by Republic's other business, which operates regional aircraft on behalf of mainline carriers, and the slots are therefore not available to exert competitive discipline on incumbent carriers. Should Frontier be successful in bidding on the slots being divested here, the approval to operate them will be conditioned upon its maintaining a low-cost carrier business plan and operating the divested slots with yields consistent with LCC operations for the duration of the five-year minimum hold requirement.

A final eligibility issue concerns Southwest Airlines and AirTran. In the July 2011 Notice, the Department recognized the merger of Southwest and

[28] 49 U.S.C. 41714 (h) provides that the definitions set forth in that section, including the definition of "Limited incumbent carrier," only apply "[i]n this section and sections 41715–41718 and 41734(h) * * *."

[29] *See, e.g.*, Gimeno, 20(2) "Reciprocal Threats in Multimarket Rivalry: Staking out 'Spheres of Influence' in the U.S. Airline Industry," *Strategic Management Journal* 101 at 110.

[30] 75 FR at 7310–11.

[31] Comments of JetBlue Airways, FAA–2010–0109, at 19–22 (Aug. 29, 2011).

[32] 76 FR 45,330, n. 40.

[33] Comments of JetBlue at 13 (Aug. 29, 2011); Reply Comments of JetBlue at 3 (Sept. 13, 2011).

[34] Comments of Virgin America at 11–12 (Aug.29, 2011).

AirTran,[35] but Westjet and Spirit seek clarification of Southwest/AirTran's status as potential bidders for divested slots.[36] Southwest and AirTran are merging, and therefore have every incentive and—unlike Frontier—ability to combine their assets to exert competitive influence in the market. Southwest and AirTran thus will be required to bid as a single unit; they are eligible to do so because their combined holdings do not exceed 5% at either airport.

Slot Bundles of Eight Pairs Will Best Promote Competitive Discipline at DCA and LGA

In the Department's earlier analysis, we expressed concern over increased levels of airport concentration, which together with (1) an increase in the number of monopoly or dominant markets in which increased pricing power could be exercised, (2) the prospect for higher fares in some markets, and (3) the potential for use of transferred slots in an anti-competitive manner, warranted conditioning approval on the carriers' agreement to divest a number of slots. Given all of these concerns, we asserted that limited divestitures at both airports would lead to an injection of additional competition from other carriers, which may effectively mitigate these prospective harms.

In our May 2010 Notice we said that an effective remedy must (1) provide a sufficient number of slots to allow other carriers to mount an effective competitive response, (2) define the pool of eligible carriers to include those with the greatest economic incentive to use the slots as intensively as possible and exert competitive discipline, and (3) ensure that the bundles of divested slots are suitable for a commercially viable service pattern and structured proportionate to the slots that are part of the slot swap.

Working from these criteria, we proposed to bundle the slots in 8-pair units at each airport, meaning that there would be one bundle at DCA and two at LGA. In the May 2010 Notice, we expressed our tentative belief that this approach would maintain high competitive discipline levels and would be preferable to dividing the slots into smaller packages that could cause underutilizations or inefficiencies.

In response, several carriers that would be designated as new entrants/limited incumbents filed comments regarding slot bundles. Allegiant proposes smaller bundles to allow the largest number of carriers with different types of operations to participate. JetBlue argues that new LCC entry at DCA makes it no longer necessary for bundles of slots to be spread throughout the day. Instead, JetBlue states that eligible carriers should be able to bid on individual slot pairs to complement their existing schedules. Virgin America claims that the bundles are unnecessarily large and would likely increase market concentration and impair competition. Sun Country contends that it would be unable to utilize all of the slots in a given bundle and that the price for the large bundles would be prohibitive. West Jet proposes that smaller bundles would lead to increased participation by smaller LCCs. Spirit, in its most recent filing, seeks a free distribution of slots "into sets of usable pairs." [37] Finally, Frontier states that it, along with every other LCC filing comments with the exception of Southwest, supports smaller bundles, maintaining that such a structure would expand the pool of LCCs and destinations gaining new or enhanced access to DCA and LGA and would reduce the relative concentration of slot holdings among just a few carriers.

Southwest contends that packaging slots into large bundles for allocation would be the most effective competitive response to the larger Delta and US Airways positions at LGA and DCA, especially if the divested slots are concentrated in the hands of a single strong competitor at both airports. Southwest maintains that the Department should avoid trying to "keep everyone happy" by placing arbitrary restrictions on the allocation process that will only result in slots being under-used or even forfeited by carriers operating insufficient frequencies and therefore unable to mount an effective response and provide meaningful price discipline to the strengthened Delta and US Airways. Southwest cites the Campbell-Hill report appended to its comments that "splitting the slots arbitrarily among multiple carriers would only dilute the impact of the new service vis-à-vis the incumbents and provide fewer competitive benefits to the public." [38] Finally, Southwest concludes that dividing the small number of divested slots among several low-cost, low-fare carriers, as Frontier supports, would be counter-productive, as the modified bundles would generate only weak and diffuse competition, thus benefiting the Joint Applicants, and wasting a rare opportunity to inject strong and sustainable low-fare competition at airports that desperately need it.

After reviewing the competing arguments, we have concluded that there is likely to be greater overall public benefit if the larger (*i.e.*, 8 slot pair) bundles are retained. Under their proposal, Delta and US Airways are not committed to any particular markets for defined periods. Each carrier would be free to discontinue any of the proposed routes and initiate others. With that flexibility, they could choose to use their increased slot holdings to target carriers with more limited slot holdings, for example by increasing their roundtrips in competitive markets and "sandwiching" competitor flights. A restructured remedy consisting of smaller bundles of slots to more carriers, as proposed by Spirit, JetBlue, Allegiant, WestJet and Virgin America could make certain new entrants highly vulnerable to such scheduling changes and frustrate the competitive responsiveness we are seeking.

Under the approach we take by this Notice, the bulk of the benefits derived from the divestitures required as a condition to this waiver will be from new entrant or limited incumbent carriers using the divested slots, and in order to be effective the bundles of remedied slots must be structured in such a way to enhance the likelihood of sustainable service. Diminishing the size and extensive time of day coverage of remedied bundles, an approach promoted by Spirit, JetBlue, Allegiant, WestJet, and Virgin America, will not create the degree of competitive impact required to compensate for the expected harm to be generated from this transaction.

We find that establishing bundles of slots for sale will enable an eligible carrier to purchase a sufficient array of slots to operate and maintain competitive service throughout the day. Bundling will assist the purchasing carrier in initiating or increasing service in an operationally efficient and pro-competitive manner. Packaging more slots in fewer bundles is the best approach to optimize competitive discipline. Furthermore, bundling eight slot pairs at DCA and two bundles of eight slot pairs each at LGA will help to avoid underutilization and inefficiencies of resources, including facilities, aircraft and staffing, that may result from more bundles containing fewer slot pairs.

[35] 76 FR 45,316.

[36] Comments of WestJet at 2, 9 (Aug. 29, 2011); Comments of Spirit at 14, n. 23 (Aug. 29, 2011).

[37] Comments of Spirit Airlines, Inc., Docket No. 2010–0109, at 5 (Aug. 29, 2011).

[38] Comments of Southwest Airlines Co., Docket No. 2010–0109, App. at 15 (Aug. 29, 2011).

Procedures for Transferring Divested Slots

In connection with the proposed auction mechanics for the purchase by eligible carriers of the divested slots, Southwest objected to the imposition of a deadline for bids. It believes that a deadline such as the one we proposed creates disincentives for early bidding and is subject to manipulation through last-minute bidding. It proposes a different approach, with features like minimum increases between offers and time limits on submitting a higher offer following the most recent offer.

We disagree. In order to allow the sale to be completed, there must be some closing time for offers. Southwest's system would create a moving deadline based on how much time has elapsed since the previous bid. Different buyers will have different strategies, and submitting an offer at the last minute is just one such strategy. For example, a bidder might equally attempt a high preemptive "shut out" offer. We cannot predict the various strategies, and, therefore, choose not to depart from our proposal, which will be easier for the FAA to manage.

Once the sales period closes, the FAA will determine the highest offer for each bundle. If each bundle receives only a single offer, the FAA would notify the seller by forwarding the purchaser's identification. If one eligible carrier had made the highest purchase offer on multiple bundles at LGA, the FAA would determine which offer is valid based on preference ranking. The successful bid for the other LGA bundle will be the next-highest offer from a carrier that remains eligible to purchase the slots. This information will be forwarded to the respective seller. The FAA will notify the selling and purchasing carriers to allow them to carry out the transaction, including any gate and ground facilities arrangements. The full amount of the proceeds could be retained by the selling carrier. The seller and purchaser will be required to notify the FAA that the transaction has been completed and certify that only monetary consideration will be or has been exchanged for the slots.

In the July 2011 Notice, we had proposed that if the highest bidder for both LGA bundles was the same eligible carrier, the amounts of the offers would be communicated to the seller and the seller could choose to accept both highest offers instead of the highest offers of two different eligible bidders as identified by the FAA. In its comments, the Port Authority of New York and New Jersey (Port Authority) would allow more than one bundle there to go to a single purchaser, and Southwest argued that we should dispense with the proposed restriction that an eligible carrier may purchase no more than one of the LGA bundles. However, JetBlue asserted that our procedures should not enable one carrier to purchase all of the available slots, but rather should enhance the competitive benefits to the public by giving greater opportunities to new entrants and limited incumbents in light of the new and different services they provide. Frontier offered similar comments. In response, the Joint Applicants afforded "deference to the Department on how it chooses to conduct the slot auction." [39]

Upon further reflection, we believe that having two carriers receive slots at LGA achieves the better result, as it will appropriately balance our goal of a remedy introducing additional competition at the airports with our belief that the number of slots obtained by each carrier must be sufficient to assure that they can be used effectively to stimulate competition. Thus, we will modify the position on this issue that we had taken earlier and require that the carriers package the divested slot pairs at LGA into two bundles which must be sold to two separate eligible carriers, as further discussed below.

In the unlikely event that there are no offers for a slot interest, the slot interests will revert automatically to the FAA. If necessary, the FAA may announce at a later date a means for disposing of a slot interest that attracts no purchase offer. Alternatively, under the Order, the FAA could simply retire the slot as a congestion mitigation measure. We do not expect that this need will arise.

We have adopted our proposal to conduct sales by a cash-only, FAA "blind" web site. A blind-only mechanism has the capability of maximizing the competitive potential of the divestiture packages, as that sale method would target the potential competitors with the greatest economic incentive to use slots as intensively and efficiently as possible.

Retention of the Sale Proceeds by the Joint Applicants

A number of commenters, including several air carriers, question our proposal to allow the Joint Applicants to retain the proceeds from the slot sales we are requiring as a condition to this waiver. These, and some others, argued that the current owners received the slots from the FAA without payment, are not the owners of slots, and that any divestitures should serve to benefit parties other than the carriers.[40] Additionally, Spirit asserts that limited incumbent airlines are entitled to the divested slots at no cost under the pro-competitive policies in Section 40101(a) and the prohibition on purchases or sales of slots in the LGA Order. Spirit also expresses concern that the Joint Applicants could enjoy a "financial windfall" by being able to retain the proceeds of a sale, citing a 2007 FAA Notice regarding operating limitations at LGA indicating that rights held under slot rules would end on December 31, 2006.[41]

The Joint Applicants respond that their application does not contemplate that slots would be divested without compensation, and that they would not have offered to divest any slots if they believed that would be required.

Allowing the Joint Applicants to retain the proceeds from the sale of the divested slots in this case is within our authority. Since 1985, the FAA has permitted carriers to purchase, lease, sell, and otherwise transfer slots for consideration under the HDR's Buy-Sell Rule.[42] The FAA's regulatory permission to buy and sell slots is consistent with the complementary HDR provision that slots do not represent a property "right" but a privilege subject to FAA control and encumbrances.[43] Furthermore, a secondary market in slots conforms to the pro-competitive policies of the Airline Deregulation Act by, among other things, relying on "competitive market forces" and "encouraging entry into air transportation markets by new and existing carriers." 49 U.S.C. 40101(a)(6), (12). Accordingly, the FAA is under no statutory obligation to have the divested slots allocated to eligible carriers free of charge. Additionally, a sale of the slots is not a financial windfall but allows the Joint Applicants to maximize the value of their slots as originally intended as part of the larger transaction. 75 FR at

[39] Response of Joint Applicants to Show Cause Order, FAA–2010–0109, at 3 (August 29, 2011).

[40] The Airports Council International (ACI–NA) argued that slots should be treated as community assets that should be used to benefit the communities and airports, rather than carriers, and the Consumer Travel Alliance argued that the slots contemplated in the transaction are not assets of the air carriers and should be treated as property of the American public. These commenters commonly referred to FAA's regulations that state that "[s]lots do not represent a property right but represent an operating privilege subject to absolute FAA control." 14 CFR 93.223(a).

[41] Comments of Spirit Airlines, FAA–2010–0109, at 4, 10 (Aug. 29, 2011), referencing FAA's Notice of Order on Operating Limitations at New York LaGuardia Airport, 71 FR 77854, 77857 (Dec, 27, 2007).

[42] 50 FR 52195 (Dec. 20, 1985); 14 CFR 93.221.

[43] 14 CFR 93.223.

7311.[44] Finally, the purchasers of the LGA slots will receive the same interest that current slot holders at LGA have. This interest is comparable to that which Delta will receive in connection with its purchase of the US Airways' LGA slots. Our waiver of the LGA Order transfers to Delta the same interests that US Airways currently holds under the terms of that Order.

After review of these comments, we remain persuaded that both our earlier position on these issues and our approach in granting the petition with divestitures are the correct ones.

Implementation in Tranches

In the July 2011 Notice, the Department proposed to prohibit each transferee Joint Applicant from operating any of the newly acquired slots during the first 90 days after the closing date of the sale of the divested slots. We further proposed to prohibit them from operating more than 50 percent of the total number of slots included in the Joint Applicants' Agreement between the 91st and the 210th day following the close date of the sale of the divested slots. After that time, we would allow the transferee to operate the remainder of the slots. The purpose of these prohibitions was to allow the new entrant and limited incumbent carriers that purchased the divested slots a sufficient period to establish competitive service, without interference from new operations of the Joint Applicants.

The Joint Applicants have not objected to this proposal, nor have others contended that it is unfair or impractical. We will therefore finalize this aspect of the waiver as it had been proposed.

Availability of Facilities to Purchasing Carriers

Our Notice proposed to require the selling carrier to make airport facilities available to the purchaser under reasonable conditions only if the purchasing carrier lacks access to facilities and is unable to obtain such access from the airport operator. We see no need to change this proposal or, as suggested by Southwest, to waive the use-or-lose period until such time as the purchasing carrier actually occupies the airport facilities. Nor do we agree with the Port Authority's suggestion to extend the proposed six-month use-or-lose waiver due to potential difficulties with arranging facilities for requesting carriers.

Rather, we fully expect both the Port Authority, as the operator of LGA, a large hub, and the Metropolitan Washington Airports Authority (MWAA), as the operator of DCA, also a large hub, to make facilities available, with reasonable dispatch, to requesting carriers and within the six-month period after the purchase of the divested slots. The Port Authority and MWAA each are bound by DOT federal grant assurances to provide reasonable and competitive access at their respective airport facilities to requesting airlines and airlines wishing to expand service at their airports. They must file competition disclosure reports with the FAA if they fail to do so. Additionally, they have each taken action, under their airport competition plans, to reduce barriers to entry and enhance competitive access at their airports. Furthermore, the Department and the FAA are available to facilitate access at appropriate airport facilities if necessary.

Additionally, we note that Airports Council International—North America (ACI–NA) comments that the grant of this waiver, subject to the conditions specified in the initial Notice, would "unlawfully * * * usurp the proprietary right of the Port Authority and the Metropolitan Washington Airports Authority to control how their facilities at LGA and DCA were used."[45] Under 49 U.S.C. Section 40103(b)(1), however, it is the FAA, not the airports, that has the authority "to develop plans and policy for the use of the navigable airspace and assign by regulation or order the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace." This power includes the authority to limit flight operations at congested airports and to distribute and allocate landing and takeoff reservations (slots) to designated air carriers at controlled airports. Further, because the airports are under federal obligations to make facilities available, on a reasonable basis, to requesting carriers, we fully expect the airports to work with the carriers as they have in the past, in providing accommodation to requesting carriers.

Finally, WestJet filed comments urging that Customs and Border Protection pre-clearance procedures be made available at the applicable Canadian airport in the event that any successful bidder intends to use its slots for service to Canada, or in the alternative that FAA extend the six-month startup grace period in order to allow the bidder to obtain the necessary pre-clearance privileges. The granting of such privileges is within the purview of the Department of Homeland Security (DHS), not FAA, and WestJet or any other interested party may make appropriate inquiries on this issue with DHS. Should there be extenuating circumstances with preclearance matters in connection with compliance with the six-month startup provision, the Department will be available to work with the carrier and other appropriate parties as noted above.

Other Issues Raised by Commenters

Among its other comments, Virgin America, Inc. urges the Department to create a "strategic slot reserve," with the divested slots, so that if (1) the available slots were not purchased by eligible participants in the divestiture process, (2) the purchasers did not meet minimum utilization requirements in operating the slots, or (3) the purchasers no longer met new entrant or limited incumbent eligibility requirements, the slots would be reserved for allocation to only eligible new entrants and limited incumbents.

The Department had already proposed certain alienation limitations in the Notice to ensure that the divestiture process did not enable or result in transactions that undermined the pro-competitive purpose of the proposal. Under our tentative proposal, the successful bidders would not be permitted to sell or lease the slots for 12 months following purchase, although one-for-one trades for operational purposes would be permitted. The slots could, after the initial 12 months, be sold, traded, or leased to any carrier that, at the time of the sale, trade, or lease, qualified as a new entrant or limited incumbent, for four years thereafter, with all restrictions on alienation thus ending five years following the initial sale. If by some chance slots went unsold, they would revert to the FAA and, if appropriate, it would announce at a later date whether it would retire them to reduce congestion or make them available to other carriers.

After considering Virgin America's comment, DOT believes the July 2011 Notice's approach better implements a pro-competitive market environment at

[44] Spirit and the Air Carrier Association of America contend that the Joint Applicants did not seek compensation for the divested slots. Comments of Air Carrier Ass'n of Am., FAA–2010–0109, at 3 (July 1, 2011); Comments of Spirit Airlines, FAA–2010–0109, at 2 (June 24, 2011). The Joint Applicants dispute this allegation, and state that "[t]hey would not have offered to divest slots if they had believed that they would be withdrawn and reallocated without compensation." Response of Joint Applicants to Show Cause Order, FAA–2010–0109, at 4 (Aug. 29, 2011).

[45] Comments of Airports Council Int'l—N. Am., FAA–2010–0109, at 4 (Aug. 30, 2011). We note that neither the Port Authority nor MWAA has made this assertion on their own behalf.

the airports and better balances competing objectives in the bidding process. Virgin America's proposal does not address sale, trade or lease issues, and after review of other comments we are confident both that the bidding process will attract robust competition for the slots, and that the successful bidders will be highly motivated to maintain high utilization rates. Moreover, creating permanent encumbrances on the slots with "in perpetuity" restrictions would likely generate greater caution by carriers in bidding, and produce greater burdens in administering the slot rules.

San Francisco International Airport expresses concern that the grant of this waiver to the Joint Applicants would create an incentive for carriers to create congestion at other airports that are not currently slot-constrained, so as to cause those airports to become slot-constrained, and allow those carriers to benefit from the sale of the newly-created slots.[46] We do not believe this concern is well-founded. Carriers that intentionally over-schedule their operations at an airport incur significant costs and delays in their own operations. If the FAA is forced to reduce schedules, carriers should not expect the FAA to accept any flights that perpetuate congestion. Moreover, under the Buy-Sell rule, carriers have enjoyed the ability to sell slots and retain the sales proceeds at certain slot-controlled airports (and still enjoy that ability at DCA), and that has not resulted in any effort by carriers to create other slot-controlled airports. Finally, our decision in this case should not be viewed as a policy statement or rulemaking with far-reaching effect; to the contrary, it is a waiver based on the specific facts before us and the circumstances are unlikely to be replicated at other airports.

In addition, Virgin America urges the Department to fulfill its intention to establish and implement a rule to manage congestion issues at Newark Liberty, John F. Kennedy, and LaGuardia airports. It also comments that carriers that obtain LaGuardia slots in this process should be able to seek to use those slots at other congested airports (such as Newark Liberty, where Virgin America asserts that monopoly conditions exist). While we appreciate these points, they are beyond the scope of this proceeding. As Virgin America's own comments acknowledge, a comprehensive rule to manage congestion at the three airports is under development in a different rulemaking process, and comments to this docket cannot serve as a substitute for participation in the correct proceeding.

[46] Comments of San Francisco Int'l Airport, FAA–2010–0109 (Aug. 29, 2010); *see also* Comments of Airports Council Int'l—N. Am., FAA–2010–0109, at 4 (Aug. 30, 2010).

Terms of the Final Waiver Notice

Accordingly, we will grant the waiver requested by the Joint Applicants, conditioned on: the divestiture of 32 slots at LGA (16 arrival and 16 departure) and 16 slots at DCA, through a blind, cash-only sale through an FAA-managed Web site to limited incumbent and new entrant carriers having fewer than five percent of the total slot holdings at DCA and LGA respectively, and that do not code share to or from DCA or LGA with any carrier that has five percent or more slot holdings. We also require that, to be eligible to bid on the divested slots, carriers not be subsidiaries, either partially or wholly owned, of a company whose combined slot holdings are equal to or greater than five percent at DCA or LGA respectively, with the exception of Frontier Airlines for the reasons noted above.

To enable purchasing carriers to achieve a critical mass of slots, the divested slots shall, as proposed, be bundled into eight slot pairs at each airport, with two such bundles at LGA and one at DCA. An eligible carrier may, under our proposal, purchase only one slot bundle at each airport (while indicating preference ranking for each slot bundle as part of its offer). For the reasons outlined above, we are not adopting our earlier proposal to allow the seller to opt to accept both bids of the same purchasing carrier at LaGuardia. The selling carriers may retain, in full, the proceeds of the sale of these slots.

More specifically, as outlined in the July 2011 Notice, the single bundle at DCA would include the following slots: 0700, 0800, 0800, 0900, 1000, 1000, 1100, 1200, 1300, 1400, 1600, 1700, 1800, 1800, 2000, and 2100.

At LGA, Bundle A would include slots at 0600D, 0630D, 0730A, 0830D, 0830A, 0930D, 1100A, 1230D, 1300A, 1400D, 1500A, 1600D, 1700A, 1830D, 2000A, and 2100A. Bundle B would consist of slots at 0630D, 0700D, 0800A, 0930D, 1000A, 1030D, 1230A, 1330D, 1430A, 1600D, 1630A, 1730D, 1830A, 1930D, 2030A, and 2130A.

Within 30 days of this grant of waiver, Delta and US Airways must notify in writing to the FAA whether they intend to proceed with the slot transfer transaction. If they intend to consummate the slot transfer transaction subject to this waiver, that notice must provide the following information for the divested slots:

(1) Operating Authorization number (LGA) or slot number (DCA) and time;
(2) Frequency;
(3) Effective Date(s);
(4) Other pertinent information, if applicable; and
(5) Carrier's authorized representative.

The FAA will post a notice of the available slot bundles on the FAA Web site at *http://www.faa.gov* shortly after receiving all required information from the sellers and, if practicable, will publish the notice in the **Federal Register**. The notice will provide seven business days for purchase offers to be received and will specify a bid closing date and time. Eligible carriers may register to purchase the slot bundles via e-mail to *7-awa-slotadmin@faa.gov*. Registration must be received 15 days prior to the start of the offer period and must state whether there is any common ownership or control of, by, or with any other carrier and certify that no purchase offer information will be disclosed to any person other than its agent.

The FAA will specify a bid closing date and time. The bidders' identities will not be revealed. An eligible carrier will register for each slot bundle it wishes to buy, and the FAA will assign it a random number for each registration, so no information identifying the bidder will be available to the seller or public. A bidder will be allowed to indicate its preference ranking for each slot bundle as part of its offer. Finally, the FAA will review the offers for each bundle in order. All offers to purchase slot bundles will be sent to the FAA electronically, via the e-mail address above, by the closing date and time. The offer must include the prospective purchaser's assigned number, the monetary amount, and the preference ranking for that slot bundle. No extensions of time will be granted, and late offers will not be considered. The FAA will post all offers on the Web site as soon as practicable after they are received. Each purchaser would be able to submit multiple offers until the closing date and time.

Once the sales period closes, the FAA will determine the highest offer for each bundle. If each bundle receives only a single offer, the FAA will notify the seller by forwarding the purchaser's identification. If one eligible carrier had made the highest purchase offer on multiple bundles at LGA, the FAA will determine which offer is valid based on preference ranking. The successful bid for the other LGA bundle will be the next-highest offer from a carrier that remains eligible to purchase the slots.

This information will be forwarded to the respective seller. The FAA will notify the selling and purchasing carriers to allow them to carry out the transaction, including any gate and ground facilities arrangements. The full amount of the proceeds may be retained by the selling carrier. The seller and purchaser will be required to notify the FAA that they have entered into a binding agreement with respect to the sale of the slots and certify that only monetary consideration will be or has been exchanged for the slots. This notification must occur within five business days of notification by the FAA of the winning offer. The FAA then will approve the transaction and will maintain and make publicly available a record of the offers received, the identity of the seller and purchaser, and the winning price.

Additionally, to allow the new entrant and limited incumbent carriers purchasing the divested slots to establish competitive service, we shall prohibit each transferee Joint Applicant from operating any of the slots acquired by virtue of this waiver during the first 90 days after the closing date of the sale of the divested slots and from operating more than 50 percent of the total number of slots included in the Joint Applicants' Agreement between the 91st and the 210th day following the close date of the sale of the divested slots, after which time the transferee will be free to operate the remainder of the slots.

As discussed above and as proposed, if the purchasing carrier lacks access to gates and ground facilities and is unable to obtain such access from either the Port Authority, the operator of LGA, or from MWAA, the operator of DCA, the selling carrier must make these available to the purchaser under reasonable terms and rates. We also direct the Joint Applicants to cooperate fully with the purchasing carrier and the respective airports to enable the startup operations to begin within six months after purchase.

Slots obtained through this procedure will be subject to the same minimum usage requirements as provided in the LGA Order and HDR. However, we will waive the respective use or lose provisions of the LGA Order and HDR for slots operated by the purchaser for six months following purchase to allow the purchaser to begin service in new markets or add service to existing markets. The purchaser must initiate service no later than six months following purchase.

The purchaser may lease the acquired slots to the seller until the purchaser is ready to initiate service to maximize operations at the airports. As proposed, however, slots may not be sold or leased to other carriers during the 12 months following purchase, because the purchaser must hold and use the acquired slots.

Purchasers could engage in one-for-one trades of these slots for operational needs. The limitations would attach to any slot acquired by an eligible carrier in a one-for-one trade. Any one-for-one trades are subject to the FAA notice requirements in the LGA Order and HDR. Any trades or leases of LGA slots may not exceed the duration of the LGA Order.

After the initial 12 months, and for four years thereafter, the slots may be sold, traded, or leased (as authorized by the HDR at DCA and as otherwise authorized at LGA) to any carrier that at the time of the sale, trade, or lease would have met the eligibility requirements to make an offer for the divested slots under this waiver. These alienation restrictions will increase the likelihood that the divested slots are used and operated by carriers that will enhance competition at LGA and DCA, lower fares, and benefit the traveling public. We recognize, however, that restrictions on alienation of these slots may depress their value for the carriers holding them. Accordingly, the alienation restrictions on the divested slots will terminate five years after initial sale. This will balance the need and desire of those carriers to maximize the value of the divested slots with the Department's desire to afford the traveling public a broad array of competitive service.

In the unlikely event that there are no offers for the slots, they will revert automatically to the FAA. If necessary, the FAA may retire the slots or announce at a later date a means for disposing of a slot bundle that attracts no purchase offer. We do not expect that this need will arise.

The grant of waiver becomes effective upon the issuance of this Notice. Failure by the Joint Applicants to comply with the terms and conditions contained in this Notice may result in partial or complete withdrawal of the waiver or other penalties.

Issued in Washington, DC, on October 7, 2011.

Ray LaHood,

Secretary.

J. Randolph Babbitt,

Administrator, Federal Aviation Administration.

Appendix

Summary of Comments

We received comments from numerous commenters, which are summarized below.

Southwest Airlines Co. argues that FAA should require divestitures that are, at a minimum, in-line with DOT's May, 2010 Order, which was 20 slot pairs at LGA and 14 slot pairs at DCA. Southwest urges FAA to eliminate the possibility of the Joint Applicants playing a role in the selection process, to use a true market-based auction where the highest cash bid on each slot bundle wins, and to remove the restriction that an eligible air carrier may only purchase one LGA slot bundle. Other options have the potential of manipulation in that the seller may have the ability to choose the weakest competitor and thereby the ability to act in an anti-competitive manner. FAA should also amend its order to require that the air carriers selling the divested slots should work with the respective airport authorities to make airport facilities available on no less favorable terms than those now afforded to the Joint Applicants and that airport ground equipment is made available on reasonable terms.

JetBlue Airways Corp. commented on June 15, 2011, before our Notice on the Joint Applicants' revised Petition was issued, and again on August 30, 2011. JetBlue suggests that the Department structure the auction so that the Joint Applicants have no ability to select the winning bidders. Further, JetBlue argues that the Department should make minor adjustments to the procedures defined in its May, 2010 Final order. Specifically, DOT should: (1) Clarify the rights associated with the divested slots; (2) auction off the divested slots in pairs rather than bundles; (3) limit participation in the auction to "new entrant and limited incumbents" in accordance with 49 U.S.C. 41714(h)(5), *i.e,* generally, to carriers having fewer than 20 slots and slot exemptions at the respective airport; and (4) limit participants in the auction to purchasing two slot pairs in the first round of bidding.

Frontier Airlines, Inc. submitted initial comments urging the Department to require divestitures consistent with our May, 2010 Notice, of no less than 28 DCA slots (14 slot pairs) and 40 LGA slots (20 slot pairs). In order to maximize the number and geographic diversity of LCC's, Frontier urged the Department to reallocate the slots in bundles of no more than eight slots (or four slot pairs) in each bundle. Frontier is supportive of the Department's determination of its eligibility for the auction process, but suggested a few modifications to that process. Specifically, DOT should use a single round of bidding and require eligible air carriers to submit their best and final offer, or establish a multi-bid process with set deadlines for each round of bids and require that bidders

participate in each round of bidding in order to be eligible to participate in the final round of bidding. Additionally, FAA should be the sole entity controlling the selection of the winning bidders. Frontier encourages the Department to treat Southwest and AirTran as one single air carrier for the purpose of the auction, and urges the Department to publicly disclose the winning bidder and amount of each winning bid.

Spirit Airlines, Inc. is supportive of the divestment of slots, but urges the Department to modify the transaction process. Spirit discourages the Department from using an auction based approach to reallocate the divested slots, and proposes that FAA reallocate the slots, without requiring compensation, to LCC incumbents that operate less than five percent of the slots at DCA and LGA. Spirit takes the position that the Joint Applicants have not sought payment and according to 49 U.S.C. 40101(a), US Airways and Delta are prohibited from selling such slots. Further, Spirit claims that the Joint Applicants did not pay for the slots contemplated in the proposed transaction; rather, those slots were allocated to the Joint Applicants through AIR–21, and therefore the Joint Applicants should not reap financial benefit at the expense of LCCs. Additionally, Spirit claims that it is in the public's best interest to distribute the divested slots without charge, and forcing eligible LCCs to purchase the divested slots will result in higher fares for passengers.

Spirit further urges the Department to group the divested slots into four bundles of four slot pairs each at LGA, and four bundles of two slot pairs each at DCA. Spirit states that the proposed auction method puts it at a disadvantage, and that the carriers with the "deepest pockets" could acquire all of the available slots. The air carrier claims it is 80% smaller than JetBlue and 95% smaller than Southwest/AirTran, and urges the Department to adopt the limited incumbent definition proposed in the Department's Final Notice of May 2010.

The Air Carrier Association of America ("ACAA") supports Spirit's proposal to distribute the divested slots without charge. ACAA urges the Department to impose divestitures of 40 slots at LGA and 28 slots at DCA, and to allocate those slots to LCCs with less than five percent of the slots at DCA/LGA. ACAA asserts that there has been no change in the level of competition at LGA or DCA since the Department issued its previous Final Notice of May 2010.

Allegiant Air asserts that it is eligible to acquire a portion of the LGA slots, and encourages the Department to re-bundle the divested slots into smaller groups.

WestJet encourages the Department to modify the proposed requirements that allow air carriers to bid on a minimum of eight slot pairs. Additionally, in the event that LGA slots are obtained by carriers proposing service to Canada, WestJet urges the Department to assist in their obtaining authority to pre-clear passengers through U.S. Customs and Border Protection at applicable Canadian airports.

Virgin America, Inc. urged the Department to mandate a greater number of slots to be divested, and encourages the Department to establish and implement congestion mitigation strategy at the major airports in and around New York City. Additionally, Virgin suggests that the Department modify its conditions in the following ways: (1) Lower the definition of limited incumbent from fewer than five percent; (2) not exempt Frontier Airlines from the "no subsidiaries" requirement; (3) modify the number of bundles, which are "unnecessarily" large; (4) establish a "strategic slot reserve" as detailed in its comments in the docket; and (5) allow air carriers to use the divested slots at other congested New York airports such as Newark Liberty International Airport ("EWR").

Sun Country Airlines urges the Department to allow air carriers the ability to purchase individual slots rather than bundles of slots, and proposes that half of the divested slots should be returned to the Department and subsequently reallocated to new entrants or limited incumbents through a lottery system without charge.

San Francisco International Airport commented to express concerns about (1) the future use and sale of slots at congested airports, and (2) possible negative repercussions of allowing air carriers to reap financial reward from the sale of slots.

The Port Authority of New York and New Jersey offered a number of suggestions regarding the proposed transaction: (1) Certain aspects of the sale mechanism should be changed to increase competition and reduce collusive behavior; (2) a six-month deadline to commence use of the divested slots is unreasonable; and (3) the Department should not allow any of the divested slots to be retired in the unlikely event that no air carriers assumes control of the divested slots.

Airport Council International ("ACI–NA") discourages the Department from granting the waiver petition. ACI–NA urges the Department to treat the divested slots as property of the community and not assets of air carriers. ACI–NA contends that the Joint Applicants should not be allowed to receive payment from the divestment of slots, which potentially has negative repercussions.

The City of Tallahassee, Florida encourages the Department to move through the divestment process as expeditiously as possible.

Dane County Regional Airport (Madison, Wisconsin) is supportive of the transaction, but is concerned about possible loss of service.

The New York Travel Advisory Bureau, and various travel agents and corporate travel managers expressed support for the Joint Applicants' proposed transaction, generally citing the potential for greater benefits to the economy of New York, the benefit of improvements proposed for the infrastructure at LaGuardia, and prospects for improved tourism and travel opportunities.

The Honorable Jeff Miller, Representative of the First District of Florida, expressed support for the proposed transaction as potentially leading to more air transportation connectivity between Northwest Florida and DCA.

Mayor Bowers of Roanoke, Virginia, and various other businesses, educational institutions, and private citizens in and around Roanoke, expressed strong concern about the potential loss of nonstop service to LGA from their community.

The Consumer Travel Alliance ("CTA") urges the Department to reexamine the proposed transaction from the taxpayers' point of view. CTA argues that the slots contemplated in the transaction are not assets of the air carriers and should be treated as property of the American public. CTA has concerns about the repercussions of incentivizing air carriers by allowing airlines to reap financial reward in exchange for scarce slots. CTA urges the Department to reallocate the divested slots to those air carriers that propose to operate large aircraft with those slots, and to air carriers willing to invest in equipping their fleet with NextGen technology. Additionally, CTA urges the Department to consider the difficult task of reallocating the limited airport facilities to the winning bidders.

Supplemental and Responsive Pleadings

The Joint Applicants submitted responsive comments in the docket, and assert that they take no issue with JetBlue's position on the subject of the Joint Applicants' role in the selection of recipients of the divested slots. Furthermore, the Joint Applicants take no position with comments regarding modifications to the auction process. Delta and US Airways assert that they did not contemplate divesting the slots without monetary compensation, and would not have offered to divest such slots had they believed the slots would be withdrawn and reallocated without compensation. The Joint Applicants claim they have the authority to sell slots, and argue that divestiture of 32 slots at LGA and 16 slots at DCA is consistent with the public interest standard. The Joint Applicants further argue that Frontier is not eligible to participate in the auction without special dispensations.

Spirit submitted additional comments in the docket on August 30, 2011, in which it opposes the transaction unless an additional four slot pairs are divested. Spirit claims that 16 slot pairs at LGA will not be an adequate number of divested slots to counter-balance the anti-competitive impact of Delta's newly acquired LGA slots. Spirit strongly opposes an action process that results in the Joint Applicants receiving monetary compensation in exchange for the divested slots. Spirit contends that Congress has defined "limited incumbents" as air carriers holding fewer than 20 slots, and the Department should adopt this definition.

In its responsive submission, ACAA urges the Department to require more divested slots than 16 slot pairs at LGA and 8 slots pairs at DCA. ACAA argues that the Joint Applicants obtained control of the slots contemplated in the transaction without payment and therefore should not receive a financial windfall from low cost carriers in exchange for the slots. ACAA encourages the Department to promote competition at DCA and LGA by divesting slots to air carriers that hold less than five percent of the slots at the respective airports and proposes to use those slots to operate aircraft with at least 110 seats.

Frontier Airlines encourages the Department to define "limited incumbents"

as those air carriers that operate fewer than five percent of the slots at DCA and LGA. Frontier urges the Department to allocate the divested slots into smaller bundles than what was proposed in the Notice of the revised Petition and prohibit an air carrier from acquiring all of the slots. Additionally, Frontier argues that divested LGA slots should not be transferable to EWR, and that exempting Frontier from the "no subsidiaries" requirement is fully justified and in the public interest.

Southwest submitted responsive comments supporting the Department's definition of "limited incumbent" in this proceeding, pointing out that any other definition would be inconsistent with the May 2010 Notice regarding the previous, similar transaction, and arguing that the proposed definition ensures that the divested slots are "put to their best competitive use * * * to produce the maximum public benefits and partially offset the anticompetitive effects of the slot swap." Southwest further argues that this definition is justified in order to ensure that the transaction is in the public interest. It also claimed that smaller bundles of slots would provide only "weak and diffuse" competition by low-fare carriers. Southwest also supported a simple auction format in which the highest bidder won each bundle of slots.

Continental Airlines, Inc. and United Air Lines, Inc. submitted responsive comments opposing Virgin America's suggestion that divested LGA slots should be transferable to EWR.

In a September 13, 2011 submission, JetBlue reiterated its position that additional slot divestitures are required to ameliorate the anticompetitive effects of the proposed transaction. It also continued to argue that "limited incumbent" was defined in statute by the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR–21), and that implementation of AIR–21 is the core issue in this proceeding.

ACAA responded to these comments in a September 21, 2011 filing, and restated the benefits it believes accrue to the public from allowing carriers with more than five percent of the slots at either airport to participate in the auction.

[FR Doc. 2011–26465 Filed 10–11–11; 4:15 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Technical Standard Order (TSO)–C129a, Airborne Supplemental Navigation Equipment Using the Global Positioning System (GPS)

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Notice of cancellation of TSO–C129a, *Airborne Supplemental Navigation Equipment Using the Global Positioning System (GPS).*

SUMMARY: This notice announces the FAA's cancellation of TSO–C129a, Airborne Supplemental Navigation Equipment Using the Global Positioning System (GPS) effective October 21, 2011. TSO cancellation will not affect production according to an existing TSO authorization (TSOA). Articles produced under an existing TSOA can still be installed according to existing airworthiness approvals and applications for new airworthiness approvals will still be processed.

The effect of the cancelled TSO will result in no new TSO–C129a design or production approvals. However, we will accept applications for new TSO–C129a TSO Authorizations (TSOA) until October 21, 2012 if we know that you were working toward a TSO–C129a approval prior to October 21, 2011.

DATES: Comments must be received on or before October 20, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Bridges, AIR–130, Federal Aviation Administration, 470 L'Enfant Plaza, Suite 4102, Washington, DC 20024. Telephone (202) 385–4627, fax (202) 385–4651, e-mail to: *kevin.bridges@faa.gov.*

SUPPLEMENTARY INFORMATION: The FAA published a **Federal Register** notice on August 16, 2011 (76 FR 50808) describing our intent to cancel TSO–C129a to solicit feedback. We received a total of six comments from three parties with questions or concerns about the cancellation. For example, there was a comment to provide a transition period for applicants working toward a TSO–C129a approval prior to the cancellation date. The FAA agreed with this comment and has included a transition period in this notice. Another comment expressed concern regarding how an existing TSO–C129a technical standard order authorization (TSOA) would be addressed on an article with multiple TSOAs that has a change not affecting TSO–C129a. The FAA agrees to address this issue through a policy revision and/or policy memo. However, none of the parties providing comments expressed an objection to TSO–C129a being cancelled or provided reasons to not cancel the TSO.

Comments Invited

You are invited to comment on the cancellation of the TSO by submitting written data, views, or arguments to the above address on or before October 14, 2011. The Director, Aircraft Certification Service, will consider all comments post-marked or received before the TSO cancellation date.

Background

On September 21, 2009, the FAA published TSO–C196, Airborne Supplemental Navigation Sensors for Global Positioning System Equipment Using Aircraft-Based Augmentation; an updated minimum performance standard for GPS sensors not augmented by satellite-based or ground-based systems (*i.e.*, TSO–C129a Class B and Class C). The FAA has also published two TSOs for GPS augmented by the satellite-based augmentation system (TSO–C145c, Airborne Navigation Sensors Using the Global Positioning System Augmented by the Satellite-Based Augmentation System; and, TSO–C146c, Stand-Alone Navigation Equipment Using the Global Positioning System Augmented by the Satellite-Based Augmentation System).

TSO–C145c, TSO–C146c, and TSO–C196 incorporate more stringent standards and testing requirements that make the GPS equipment more accurate and robust than sensors built to the minimum requirements in TSO–C129a. Two examples of these improvements are: (1) A requirement for the receiver to properly account for satellite range error if it is reflected in the User Range Accuracy index (commonly referred to as being "Selective Availability aware"); and, (2) requirements to ensure performance is not degraded due to an increasing radio frequency noise environment as other satellite systems become available.

Since 2005, there has only been one application for a TSO–C129a TSOA on a new article. Many manufacturers informally indicate they are transitioning, or planning to transition, their product lines to the new TSOs. Therefore, we believe cancelling TSO–C129a is an appropriate way to assist the natural phase-out/upgrade cycle given the eventual obsolescence of TSO–C129a equipment and industry's lack of interest in new TSO–C129a designs.

Issued in Washington, DC, on October 7, 2011.

Susan J.M. Cabler,

Assistant Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 2011–26449 Filed 10–12–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35553]

Big Spring Rail System, Inc.;Operation Exemption;Transport Handling Specialists, Inc.

Big Spring Rail System, Inc. (BSRS), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to

operate over approximately 2.07 miles of rail line between mileposts 0.0 and 2.07± in Howard County, Tex., owned by the City of Big Spring, Tex. (City). BSRS will be operating the line for Transport Handling Specialists, Inc., a nonoperating carrier, which is leasing the line from the City. BSRS states that it intends to interchange traffic with Union Pacific Railroad Company at milepost 0.0.

The transaction may be consummated on or after October 27, 2011 (30 days after the notice of exemption was filed).

BSRS certifies that its projected annual revenues as a result of this transaction would not exceed those that would qualify it as a Class III rail carrier and further certifies that its projected annual revenues will not exceed $5 million.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than October 20, 2011 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35553, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Baxter Wellmon, 1554 Paoli Pike, #179, West Chester, PA 19380.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: October 5, 2011.

By the Board.

Rachel D. Campbell,

Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2011–26245 Filed 10–12–11; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 6 Taxpayer Advocacy Panel (Including the States of Idaho, Iowa, Minnesota, Montana, Nebraska, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 6 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, November 2, 2011.

FOR FURTHER INFORMATION CONTACT: Timothy Shepard at 1–888–912–1227 or 206–220–6095.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 6 Taxpayer Advocacy Panel will be held Wednesday, November 2, 2011, at 11 a.m. Pacific Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Timothy Shepard. For more information please contact Mr. Shepard at 1–888–912–1227 or 206–220–6095, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or post comments to the Web site: *http://www.improveirs.org*.

The agenda will include various IRS issues.

Dated: October 6, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–26404 Filed 10–12–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Small Business/Self Employed Correspondence Exam Practitioner Engagement Project Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Small Business/Self Employed Correspondence Exam Practitioner Engagement Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, November 23, 2011.

FOR FURTHER INFORMATION CONTACT: Janice Spinks at 1–888–912–1227 or 206–220–6098.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Small Business/Self Employed Correspondence Exam Practitioner Engagement Project Committee will be held Wednesday, November 23, 2011, at 9 a.m. Pacific Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notifications of intent to participate must be made with Ms. Janice Spinks. For more information please contact Ms. Spinks at 1–888–912–1227 or 206–220–6098, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or post comments to the Web site: *http://www.improveirs.org*.

The agenda will include various IRS issues.

Dated: October 6, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–26405 Filed 10–12–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Project Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, November 22, 2011.

FOR FURTHER INFORMATION CONTACT: Ellen Smiley at 1–888–912–1227 or 414–231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Project Committee will be held Tuesday, November 22, 2011 at 2 p.m.

Central Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ms. Ellen Smiley. For more information please contact Ms. Smiley at 1–888–912–1227 or 414–231–2360, or write TAP Office Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: October 6, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–26406 Filed 10–12–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Small Business/Self Employed Correspondence Exam Toll Free Project Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Small Business/Self Employed Correspondence Exam Toll Free Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Monday, November 21, 2011.

FOR FURTHER INFORMATION CONTACT: Timothy Shepard at 1–888–912–1227 or 206–220–6095.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Small Business/Self Employed Correspondence Exam Toll Free Project Committee will be held Monday, November 21, 2011, at 9 a.m. Pacific Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Timothy Shepard. For more information please contact Mr. Shepard at 1–888–912–1227 or 206–220–6095, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: October 6, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–26407 Filed 10–12–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Project Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Monday, November, 28, 2011.

FOR FURTHER INFORMATION CONTACT: Marianne Dominguez at 1–888–912–1227 or 954–423–7978.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Project Committee will be held Monday, November 28, 2011, at 3 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Marianne Dominguez. For more information please contact Ms. Dominguez at 1–888–912–1227 or 954–423–7978, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: October 6, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–26394 Filed 10–12–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Volunteer Income Tax Assistance Project Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Volunteer Income Tax Assistance Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, November 08, 2011.

FOR FURTHER INFORMATION CONTACT: Donna Powers at 1–888–912–1227 or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Volunteer Income Tax Assistance Project Committee will be held Tuesday, November 08, 2011, 2 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Donna Powers. For more information please contact Ms. Powers at 1–888–912–1227 or 954–423–7977, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: October 6, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–26395 Filed 10–12–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 7 Taxpayer Advocacy Panel (Including the States of Alaska, California, Hawaii, and Nevada)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 7 Taxpayer Advocacy Panel will be

conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, November 17, 2011.

FOR FURTHER INFORMATION CONTACT: Janice Spinks at 1–888–912–1227 or 206–220–6098.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 7 Taxpayer Advocacy Panel will be held Thursday, November 17, 2011, at 2 p.m. Pacific Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Janice Spinks. For more information please contact Ms. Spinks at 1–888–912–1227 or 206–220–6098, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: October 6, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–26393 Filed 10–12–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Taxpayer Advocacy Panel Notice Improvement Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Notice Improvement Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, November 3, 2011.

FOR FURTHER INFORMATION CONTACT: Audrey Y. Jenkins at 1–888–912–1227 or 718–488–2085.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Notice Improvement Project Committee will be held Thursday, November 3, 2011 2 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ms. Jenkins. For more information please contact Ms. Jenkins at 1–888–912–1227 or 718–488–2085, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: October 6, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–26408 Filed 10–12–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Joint Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Joint Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, November 23, 2011.

FOR FURTHER INFORMATION CONTACT: Susan Gilbert at 1–888–912–1227 or (515) 564–6638.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Joint Committee will be held Wednesday, November 23, 2011, 2 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Notification of intent to participate must be made with Susan Gilbert. For more information please contact Ms. Gilbert at 1–888–912–1227 or (515) 564–6638 or write: TAP Office, 210 Walnut Street, Stop 5115, Des Moines, IA 50309 or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: October 6, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–26409 Filed 10–12–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, November 8, 2011.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 or 718–488–3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be held Tuesday, November 8, 2011, at 2 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ms. Knispel. For more information please contact Ms. Knispel at 1–888–912–1227 or 718–488–3557, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: October 6, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–26410 Filed 10–12–11; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

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Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List a Distinct Population Segment of the Red Tree Vole as Endangered or Threatened; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R1–ES–2008–0086; 92210–5008–3922–10–B2]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List a Distinct Population Segment of the Red Tree Vole as Endangered or Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list a distinct population segment of the red tree vole (*Arborimus longicaudus*) as endangered or threatened and to designate critical habitat under the Endangered Species Act of 1973, as amended (Act). The Petition provided three listing options for the Service to consider: Listing the dusky tree vole subspecies throughout its range; listing the North Oregon Coast population of the red tree vole (*Arborimus longicaudus*) as a distinct population segment (DPS); or listing the red tree vole because it is endangered or threatened in a significant portion of its range.

After review of the best available scientific and commercial information, we have determined that listing the North Oregon Coast population of the red tree vole as a DPS is warranted. However, the development of a proposed listing rule is precluded by higher priority actions to amend the Lists of Endangered and Threatened Wildlife and Plants. Upon publication of this 12-month petition finding, we will add this DPS of the red tree vole to our candidate species list. We will develop a proposed rule to list this DPS of the red tree vole as our priorities allow. We will make any determination on critical habitat during development of the proposed listing rule. In any interim period, we will address the status of the candidate taxon through our annual Candidate Notice of Review (CNOR).

DATES: This finding was made on October 13, 2011.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov*. Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 S.E. 98th Ave., Suite 100, Portland, OR 97266; telephone 503–231–6179; facsimile 503–231–6195. Please submit any new information, materials, comments, or questions concerning this finding to the above street address.

FOR FURTHER INFORMATION CONTACT: Paul Henson, Ph.D., Field Supervisor, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office (see **ADDRESSES** section). If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*) requires that, for any petition to revise the Federal Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific and commercial information indicating that listing may be warranted, we make a finding within 12 months of the date of receipt of the petition on whether the petitioned action is: (1) Not warranted; (2) warranted; or (3) warranted, but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are endangered or threatened, and expeditious progress is being made to add or remove qualified species from the Federal Lists of Endangered and Threatened Wildlife and Plants. Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding; that is, requiring a subsequent finding to be made within 12 months. We must publish these 12-month findings in the **Federal Register**.

Previous Federal Actions

On June 22, 2007, we received a petition dated June 18, 2007, from the Center for Biological Diversity and six other organizations and individuals (hereafter, "the petitioners"), requesting that we list the dusky tree vole as an endangered or threatened species and designate critical habitat. The petitioners requested that if we found the dusky tree vole was not a listable entity as a subspecies, we either list the North Oregon Coast population of the red tree vole as a distinct population segment (DPS), or list the red tree vole because it is endangered or threatened in a significant portion of its range, including the North Oregon Coast population. On September 26, 2007, we sent a letter to Noah Greenwald, Center for Biological Diversity, acknowledging our receipt of the petition and providing our determination that emergency listing was not warranted for the species at that time.

On October 28, 2008, we published a 90-day finding for the dusky tree vole in the **Federal Register** (73 FR 63919). We found that the petition presented substantial information indicating that listing one of the following three entities as endangered or threatened may be warranted:

(1) The dusky tree vole subspecies of the red tree vole;

(2) The North Oregon Coast DPS of the red tree vole; or

(3) The red tree vole because it is endangered or threatened in a significant portion of its range.

As a result of that finding, we also initiated a status review of the species, including an evaluation of the North Oregon Coast population of red tree vole and the red tree vole throughout its range. This notice constitutes our 12-month finding for the petition to list the dusky tree vole as endangered or threatened.

Species Information

As a putative subspecies, the dusky tree vole is a member of the red tree vole taxon. Some of the scientific literature is specific to the "dusky tree vole," but much of it describes the red tree vole and does not distinguish among subspecies. For that reason, available information on the red tree vole is presented below with the assumption that it also applies to the dusky tree vole. If the information source makes distinctions between the two, they are noted, as appropriate. Published literature on the red tree vole also includes work conducted on the closely related Sonoma tree vole (*Arborimus pomo*). Prior to 1991, these taxa were both considered red tree vole (Johnson and George 1991, entire). Where pertinent information is lacking or limited for the red tree vole, information on the Sonoma tree vole is presented because there have been no ecological or life-history differences noted for the two species (Smith *et al.* 2003, p. 187).

Tree voles are small, mouse-sized rodents that live in conifer forests and spend almost all of their time in the tree canopy. Tree voles rarely come to the ground, and do so only to move briefly between trees. They are one of the few animals to persist on a diet of conifer needles, which is their principal food. When eating, tree voles strip away the resin ducts within conifer needles and eat the remaining portion; resin ducts contain terpenoid chemicals that make

them unpalatable to most species. Red tree voles live singly (or with young, in the case of females) in nests made of vegetation and other materials. Swingle (2005, p. 2) summarized the sizes of red tree vole nests as ranging from "very small ephemeral structures about the size of a grapefruit, to large old maternal nests that may be nearly as large as a bushel basket and completely encircle the trunk of the tree (Taylor 1915; Howell 1926; Verts and Carraway 1998)." Nests of females tend to be larger than those of males. Males and females live separate lives once leaving the nest, only coming together to breed. Further details of the life-history characteristics of tree voles are presented below.

Taxonomy and Description

Tree voles are less than 8.2 inches (in) (209 millimeters (mm)) long and weigh up to 1.7 ounces (oz) (49 grams (g)) (Hayes 1996, p. 1; Verts and Carraway 1998, p. 301; Forsman 2010, pers. comm.). Pelage (fur) color ranges from brownish red to bright brownish-red or orange-red (Maser *et al.* 1981, p. 201). The darker coat color has been attributed to the dusky tree vole (Bailey 1936, p. 198; Maser *et al.* 1981, p. 201). Melanistic (all black) forms of the dusky (Hayes 1996, p. 1) and red tree vole (Swingle 2005, p. 46), as well as cream-colored red tree voles (Swingle 2005, p. 82), rarely occur.

Howell (1926, p. 35) described several physical differences between voles described as dusky tree voles and red tree voles. These differences include coat color, as well as skull and dental characteristics. However, Howell (1926, p. 34) based his description of the red tree vole on the observations of 40 tree voles, 32 of which were from California. At least 28 of the California tree voles were collected from Carlotta, Humboldt County, within the range of what is now considered the Sonoma tree vole (Howell 1926, p. 41; Blois and Arbogast 2006, pp. 953–956). Howell's description of the red tree vole was therefore based on a collection that was actually comprised primarily of Sonoma tree voles, rendering the comparison to dusky tree voles of questionable value.

The taxonomic history of red and dusky tree voles is complex; a comprehensive description can be found in Miller *et al.* (2010, pp. 64–65). The red tree vole was first described from a specimen collected in Coos County, Oregon (True 1890, pp. 303–304), and originally placed in the genus *Phenacomys*. The dusky tree vole was first described from a dead specimen found in Tillamook County and originally classified as a distinct species, *P. silvicolus* (Howell 1921, entire), later renamed *P. silvicola* (Miller 1924, p. 400). Taylor (1915, p. 156) established the subgenus *Arborimus* for tree voles, which Johnson (1968, p. 27; 1973, p. 243) later proposed elevating to full generic rank, although this genus has not been universally adopted (e.g., Verts and Carraway 1998, pp. 309–311). For the purpose of this finding, we use the generic classification, *Arborimus*, adopted by the petitioners.

Johnson (1968, p. 27) concluded that analysis of blood proteins and hemoglobin from dusky and red tree voles "* * * suggested combining the named forms of *Arborimus* into a single species * * *". Hall (1981, p. 788) cited Johnson (1968, p. 27) as suggesting a "subspecific relationship of the two taxa," and others have cited Johnson as well in supporting the classification of the dusky tree vole as a subspecies (e.g., Maser and Storm 1970, p. 64; Johnson and George 1991, p. 1). However, based on a lack of detectable genetic differences and a lack of consistently verifiable morphological differences between dusky and red tree voles, Bellinger *et al.* (2005, p. 207) suggested subspecific status of the dusky tree vole may not be warranted.

Miller *et al.* (2006a, entire) analyzed mitochondrial DNA sequences from red tree voles throughout their range in Oregon. This study was not designed to address red tree vole taxonomy, but rather, how historical processes may have affected the genetic diversity and structure of the red tree vole across much of its range. The authors found significant genetic discontinuities based on unique haplotypes that result in three genetically distinct groupings of red tree voles. A primary discontinuity divided the red tree vole's range into a northern and a southern region in terms of genetic makeup as determined from mitochondrial DNA. Some overlap of these two genetic groups occurred, but in general, red tree voles north of Douglas and southeastern Lane Counties were genetically different from tree voles to the south (Miller *et al.* 2006a, Fig.1, pp. 146, 151–152). There are no known geographic or geological features that coincide with this genetic discontinuity that might explain this genetic break. The northern genetic group was further subdivided by a secondary discontinuity that coincided with the Willamette Valley, a non-forested barrier currently separating individuals in the northern Oregon Coast Range to the west from the Cascade Range to the east (Miller *et al.* 2006a, Fig.1, pp. 146, 151–152).

Although Miller *et al.* (2006a, entire) found genetic discontinuities in the red tree vole in Oregon, the authors did not comment on the taxonomic status of the species. Subsequent conversations with the geneticists who authored this paper indicated that the genetic differences described in Miller *et al.* (2006a, entire) were substantial enough to potentially warrant taxonomically classifying the three genetically distinct groups as separate subspecies if there were corresponding differences in other traits, such as behavior or morphology, to provide additional support (Miller and Haig 2009, pers. comm.). Recent review of external morphological characters by Miller *et al.* (2010, entire) did not distinguish dusky tree voles from red tree voles, but the authors noted that additional analysis of other physical characteristics (e.g., fur color) would be required to better determine the dusky tree vole's taxonomic status. The Integrated Taxonomic Information System (ITIS), a database maintained by a partnership of U.S., Canadian, and Mexican agencies, other organizations, and taxonomic specialists to provide scientifically credible taxonomic information, does not recognize the dusky tree vole as a subspecies of the red tree vole (information retrieved 15 March 2011, from the ITIS database). Wilson and Reeder (2005, entire) is the industry standard for mammalian taxonomy. Subspecies were not recognized until the most recent edition, published in 2005. Although Wilson and Reeder (2005, pp. 962–963) recognize the dusky tree vole as a subspecies, the more recent research on tree vole genetics and analyses attempting to clarify the taxonomic status of the dusky tree vole have only become available subsequent to that review, and therefore were not considered at the time that volume was published.

Range and Distribution

Tree voles are endemic to the humid, coniferous forests of western Oregon and northwestern California (Maser 1966, p. 7). The red tree vole occurs in western Oregon from below the crest of the Cascade Range to the Pacific coast (Hayes 1996, p. 2; Verts and Carraway 1998, pp. 309–310), with a geographic range covering approximately 16.3 million acres (ac) (6.6 million hectares (ha)) across multiple ownerships (USDA and USDI 2007, p. 287) (Figure 1).

BILLING CODE 4310–55–P

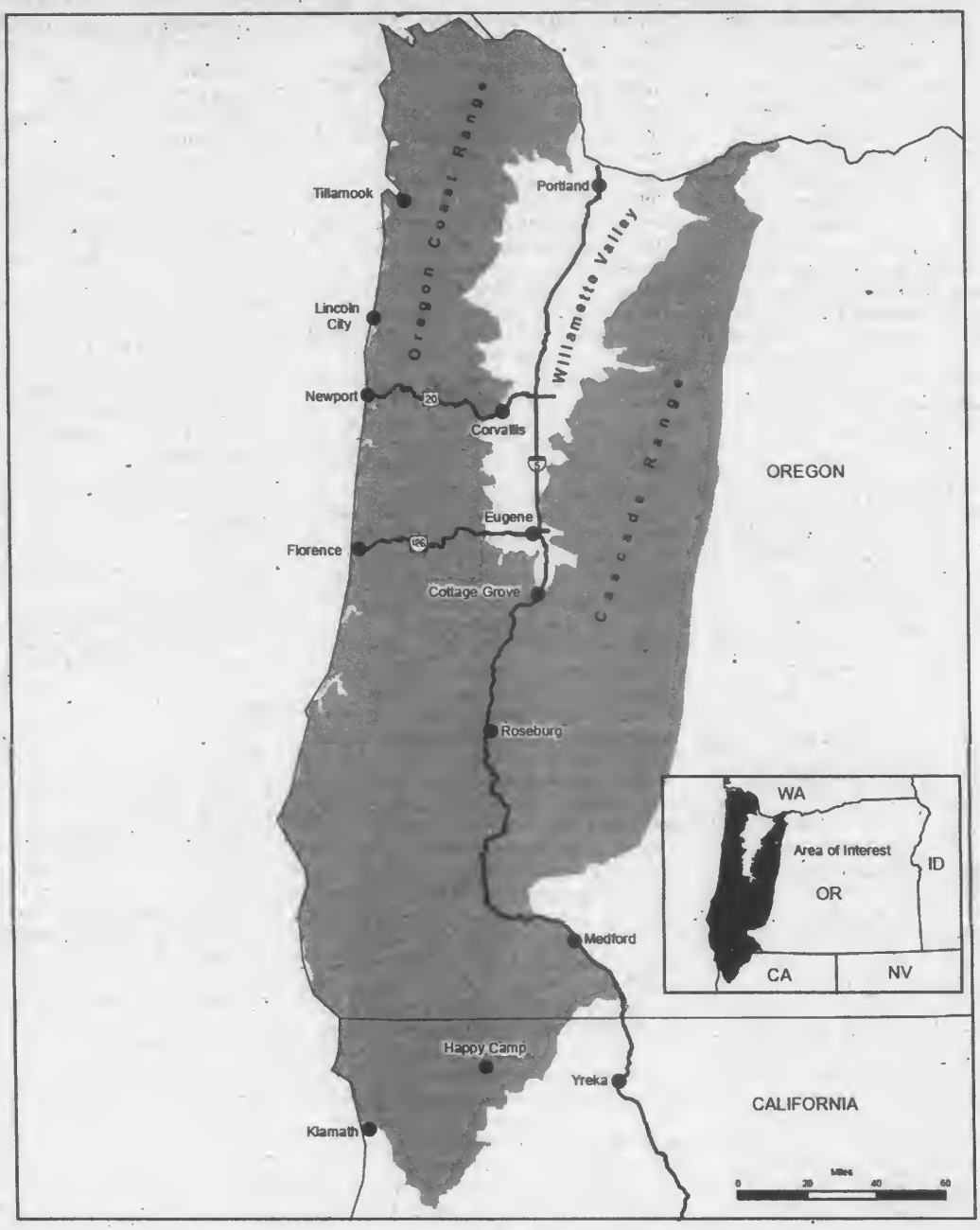

Figure 1. Range of the Red Tree Vole.

BILLING CODE 4310–55–C

The southern boundary of the range of the red tree vole borders the range of the Sonoma tree vole, which Johnson and George (1991, p. 12) classified as a separate species from the red tree vole. Johnson and George (1991, pp. 11–12) suggested the break between the ranges of these two species was the Klamath Mountains along the Oregon-California border. Murray (1995, p. 26) considered the boundary between the two species to be the Klamath River in northwestern California. A recent mitochondrial DNA analysis supports the classification of tree voles in northwestern California (Del Norte County) as *Arborimus longicaudus* (Blois and Arbogast 2006, pp. 956, 958).

The red tree vole has not been found north of the Columbia River (Verts and Carraway 1998, p. 309), but the actual northern limit of its historical distribution in northwestern Oregon is unclear. Within the Oregon Coast Range, the northernmost tree vole collection site was in the vicinity of Saddle Mountain in central Clatsop County (Verts and Carraway 1998, pp. 310, 546; Forsman and Swingle 2009, pers. comm.). Although no tree voles have been detected in recent search efforts in northern Clatsop and Columbia

Counties (Forsman and Swingle 2009, unpublished data), the area historically had extensive forests with large Douglas-fir (*Pseudotsuga menziesii*) and western hemlock (*Tsuga heterophylla*) trees conducive to tree vole habitat (Robbins 1997, pp. 205–206). Therefore, we believe it is reasonable to assume that tree voles were present in those areas prior to the late 1800s and early 1900s when virtually all old forests in the region were clear-cut or burned. The Columbia River was considered Oregon's most productive logging center in the late 1800s (Robbins 1997, p. 220), and it is likely that virtually all of the suitable tree vole habitat in Clatsop, Columbia, and Washington Counties was removed before tree vole occurrence could be recorded. Whether tree voles may persist undetected in Columbia County and northern Clatsop County is not known at this time; although not detected in the most recent search efforts, tree voles may be overlooked if they are sparsely distributed or few in number.

Farther east, the red tree vole occurs in the Columbia River Gorge from Wahkenna Creek to Seneca Fouts State Park, 4 miles (mi) (6 kilometers (km)) west of Hood River (Forsman *et al.* 2009b, p. 230). The red tree vole range had been described as west of the crest of the Cascade Range in Oregon (Corn and Bury 1986, p. 405). However, recent surveys have also found them just east of the Cascade Range crest, in the headwaters of the Lake Branch of Hood River, 19 mi (30 km) southwest of the town of Hood River (Forsman *et al.* 2009b, p. 227).

Surveys conducted for red tree voles by the Forest Service and the Bureau of Land Management as part of the Survey and Manage program under the Northwest Forest Plan (NWFP) have provided additional information on the distribution of the red tree vole (USDA and USDI 2007, p. 289). These surveys indicate red tree voles are uncommon and sparsely distributed in much of the northern Coast Range and northern Cascade Range of Oregon. Forsman *et al.* (2004, p. 300) reached the same conclusion based on remains of red tree voles in pellets of northern spotted owls (*Strix occidentalis caurina*), although data were sparse from the northern Oregon Coast Range compared to the rest of the red tree vole's range. Based on these surveys and data from owl pellets, the eastern limit of red tree vole distribution in southwestern Oregon appears to include forested areas in Josephine County and a narrow band along the western and northern edges of Jackson County (Forsman *et al.* 2004, pp. 297–298; USDA and USDI 2007, p. 289).

Red tree voles are generally restricted to lower elevation coniferous forests, although there are a few records of this species above 4,265 feet (ft) (1,300 meters (m)) (Manning and Maguire 1999, entire; Forsman *et al.* 2004, p. 300). Hamilton (1962, p. 503) suggested red tree voles may be limited to lower elevations because their nests do not provide adequate insulation during winter. Because tree voles are active throughout the year, it is also possible they are absent from high-elevation areas because they find it difficult to forage on limbs covered with snow and ice during winter (Forsman *et al.* 2004, p. 300).

The range of the putative dusky tree vole is less clear than that of the red tree vole. Johnson and George (1991, p. 12) described its range as restricted to the western slope of the Coast Range in Tillamook and Lincoln Counties. However, Maser (1966, p. 16) summarized collection and nest records for the dusky tree vole from locations east of the crest of the Coast Range down to the western edge of the Willamette Valley in Washington, Yamhill, Polk, Benton, and Lane Counties. Maser (2009, pers. comm.) believed the southern limit of the dusky tree vole to be in the vicinity of the Smith or Umpqua Rivers (western Douglas County) based on a shift in vole behavior and habitat type. Brown (1964, p. 648) mentioned four dusky tree vole museum specimens collected near Molalla in Clackamas County east of the Willamette Valley. Howell (1926, p. 34) referred to Stanley Jewett, a fellow naturalist, finding "unmistakable evidence" of red tree voles in old nests near Bonneville, in far eastern Multnomah County at the foot of the Cascade Range, and then goes on to say, "Though this sign may possibly have been of *longicaudus*, it is considered more likely to have been of *silvicola*." However, he did not elaborate on why he concluded that it was indicative of the dusky tree vole. Maser (1966, p. 8) observed that tree voles historically collected north of Eugene and west of the Willamette Valley were typically classified as dusky tree voles, while those collected north of Eugene and east of the Willamette Valley were almost all identified as red tree voles.

Home Range and Dispersal

The only published data on home range sizes and dispersal come from red tree voles radio-collared in the southern Coast Range and southern Cascades of Douglas County in southwestern Oregon (Swingle 2005, pp. 51–63, 84–89; Swingle and Forsman 2009, entire). Of 45 radio-collared red tree voles, 18 had home ranges consisting of their nest tree and a few adjacent trees, whereas the remainder occupied up to 6 different nests spaced up to 532 ft (162 m) apart in different trees (Swingle and Forsman 2009, p. 277). Mean and median home ranges were 0.43 ac (0.17 ha) and 0.19 ac (0.08 ha), respectively (Swingle and Forsman 2009, p. 278). Home range sizes did not differ among gender, age, or among voles occurring in young (22–55 years old) versus old (110–260 years old) forests (Swingle and Forsman 2009, pp. 277–279). An unpublished study conducted by Brian Biswell and Chuck Meslow found mean male home ranges of 0.86 ac (0.35 ha) and mean female home ranges of 0.37 ac (0.15 ha) (Biswell and Meslow, unpublished data referenced in USDA and USDI 2000b, p. 8). Dispersal distances of nine subadults ranged from 10 to 246 ft (3 to 75 m) (Swingle 2005, p. 63). The longest known straight-line dispersal distance was for a subadult male who traveled 1,115 ft (340 m) over the course of 40 days (Biswell and Meslow, unpublished data referenced in USDA and USDI 2000b, p. 8).

Habitat

Red tree voles are found exclusively in conifer forests or in mixed forests of conifers and hardwoods (Hayes 1996, p. 3). Throughout most of their range, they are principally associated with Douglas-fir for foraging and nesting (Jewett 1920, p. 165; Bailey 1936, p. 195). However, their nests have also been documented in Sitka spruce (*Picea sitchensis*) (Jewett 1920, p. 165), grand fir (*Abies grandis*), western hemlock, Pacific yew (*Taxus brevifolia*), and non-conifers such as bigleaf maple (*Acer macrophyllum*) and golden chinquapin (*Castanopsis chrysophylla*) (Swingle 2005, p. 31). Hardwoods are generally not recognized as an important habitat component (USDA and USDI 2002, p. 1). Tree vole nests are located in the forest canopy and are constructed from twigs and resin ducts discarded from feeding, as well as fecal pellets, lichens, dead twigs, and conifer needles (Howell 1926, p. 46; Clifton 1960, pp. 53–60; Maser 1966, pp. 94–96; Gillesberg and Carey 1991, p. 785; Forsman *et al.* 2009a, p. 266). On the occasions when tree voles nest in non-conifers or snags, they are virtually always in trees that have limbs interconnected with adjacent live conifers where the voles can obtain food (Maser 1966, p. 78; Swingle 2005, p. 31). Within the northern Oregon Coast Range, primarily in the Sitka spruce plant series (see Distinct Vertebrate Population Segment Analysis for plant

series description), tree vole diet and nest tree species selection favors western hemlock and Sitka spruce (Walker 1930, pp. 233–234; Forsman *et al.* 2008, Table 2; Forsman and Swingle 2009, pers. comm.; Maser 2009, pers. comm.), although some vole nests have been found in Douglas-fir in this plant series (Howell 1921, p. 99; Jewett 1930, pp. 81–83; Forsman and Swingle 2009, pers. comm.).

Based on their study of small mammal habitat associations in the Oregon Coast Range, Martin and McComb (2002, p. 262) considered red tree voles to be habitat specialists. In that study of forests of different patch types, red tree voles selected "conifer large sawtimber patch types" and landscapes that minimize fragmentation of mature conifer forest (Martin and McComb 2002, pp. 259, 261, 262). The vegetation classification scheme used by Martin and McComb (2002, p. 257) defines the conifer large sawtimber patch type as forest patches with greater than 70 percent conifer composition, more than 20 percent canopy cover, and mean diameter at breast height (dbh) of greater than 21 in (53.3 cm) (it should be noted that studies where researchers actually measured the canopy cover of stands used by red tree voles indicate the minimum canopy cover requirements of red tree voles are much higher, on the order of 53 to 66 percent (e.g., Swingle 2005, p. 39)). Red tree voles were most abundant in contiguous mature conifer forest (unfragmented landscapes), and were negatively affected by increasing patch densities at the landscape scale (Martin and McComb 2002, p. 262).

Although red and Sonoma tree voles occur and nest in young forests (Jewett 1920, p. 165; Brown 1964, p. 647; Maser 1966, p. 40; Corn and Bury 1986, p. 404; Thompson and Diller 2002, entire; Swingle and Forsman 2009, p. 277), most comparisons of relative abundance from pitfall trapping and nest presence data show increased occurrence in older forests throughout the range of these species (Corn and Bury 1986, p. 404; Corn and Bury 1991, pp. 251–252; Ruggiero *et al.* 1991, p. 460; Meiselman and Doyle 1996, p. 38; Gomez and Anthony 1998, p. 296; Martin and McComb 2002, p. 261; Jones 2003, p. 29; Dunk and Hawley 2009, entire). The occurrence of active nests in remnant older trees in younger stands indicates the importance of legacy structural characteristics (USDA and USDI 2002, p. 1). Although the bulk of the evidence points to forests with late-successional characteristics as important to the red tree vole, we lack specific data on the minimum size of trees or stands required to sustain populations of the red tree vole over the long term.

There is no single description of red tree vole habitat and a wide variety of terms have been used to describe the older forest stands the tree voles tend to select (e.g., late-successional, old-growth, large conifer, mature, structurally complex). Where these terms appear in cited literature, or where specific ages are referred to, we refer to them in this analysis. Otherwise, we use the term "older forest" when collectively referring to these stand conditions. In using the term "older forest," we are not implying a specific stand age that represents tree vole habitat. Rather, we use the term to represent the mixture of old and large trees, multiple canopy layers, snags and other decay elements, understory development and biologically complex structure and composition often found in forests selected by tree voles.

The most extensive and intensive analysis of red tree vole habitat associations on Federal lands throughout the vole's range found a strong association between tree vole nest presence and late-successional and old-growth forest conditions (forests over 80 years old), with optimal red tree vole habitat being especially rare (Dunk and Hawley 2009, p. 632). Throughout their range on Federal land, the probability of red tree vole nest presence (Po) in the highest quality habitat (forest exhibiting late-successional structural characteristics) was 7 times more than expected based on the proportional availability of that habitat, whereas in lowest quality, early-seral forest conditions, Po was 7.6 times less than expected based on availability (Dunk and Hawley 2009, p. 632). In other words, red tree voles demonstrated strong selection for nesting in stands with older forest characteristics, even though that forest type was relatively rare across the landscape. Conversely, tree voles avoided nesting in younger stand types that were much more common across the landscape.

Trees containing tree vole nests are significantly larger in diameter and height than those without nests (Gillesberg and Carey 1991, p. 785; Meiselman and Doyle 1996, p. 36 for the Sonoma tree vole). Other forest conditions associated with red tree vole habitat include the number of large trees and variety of tree size distribution (Dunk and Hawley 2009, p. 632). Carey (1991, p. 8) suggested that tree voles seem especially well-suited to the stable conditions of old-growth Douglas-fir forests (multi-layered stands over 200 years old, with decay elements). Old-growth trees may be optimum tree vole habitat because primary production is high and needles are concentrated, providing maximum food availability (Carey 1991, p. 8). In addition, old-growth canopy buffers weather changes and has high water-holding capacity, providing fresh foliage and a water source (Gillesberg and Carey 1991, pp. 786–787), as well as numerous cavities and large limbs that provide stable nest substrates.

As noted above, tree voles can be found in younger forests, sometimes at fairly high densities (Howell 1926, pp. 41–45: Maser 1966, pp. 216–217; Thompson and Diller 2002, p. 95). It is not understood how younger forests influence the abundance, persistence, or dispersal of red tree voles. Carey (1991, p. 34) suggested younger forests were population sinks for red tree voles. Based on surveys in young forests (22–55 years old) and observations of radio-collared tree voles, Swingle (2005, pp. 78, 94) and Swingle and Forsman (2009, pp. 283–284) concluded that some young forests may be important habitat for tree voles, particularly in landscapes where old forests have largely been eliminated or currently exist in isolated patches. However, Swingle (2005, pp. 78, 94) cautioned against using the occasional presence of tree voles in young forests to refute the importance of old forest habitats to tree voles. Young forest stands may serve as interim habitat for tree voles and may provide connectivity between remnant patches of older forest, but whether younger forests are capable of supporting viable populations of tree voles over the long term is uncertain. The limited evidence available suggests that tree vole occupation of younger forest stands may be relatively short-lived (Diller 2010, pers. comm.) or intermittent (Hopkins 2010, pers. comm.).

After weighing all of the best available information, we conclude that although red tree voles may use younger forest types to some degree, the preponderance of evidence suggests red tree voles demonstrate strong selection for forests with older forest conditions, as well as contiguous forest conditions. Whether tree voles can potentially persist in younger forests over the long term is unknown (USDA and USDI 2007, p. 291). However, although the data are limited, the available evidence suggests that red tree voles likely do not maintain long-term or consistent populations in younger stands (Diller 2010, pers. comm.; Hopkins 2010, pers. comm.). There is a relatively large body of evidence, on the other hand, that red tree voles exhibit strong selection for areas of contiguous habitat exhibiting

conditions characteristics of older, mature forests (Corn and Bury 1986, p. 404; Corn and Bury 1991, pp. 251–252; Ruggiero *et al.* 1991, p. 460; Meiselman and Doyle 1996, p. 38; Gomez and Anthony 1998, p. 296; Martin and McComb 2002, p. 261; Jones 2003, p. 29; Dunk and Hawley 2009, entire). We therefore further conclude that unfragmented forests with late-successional characteristics are thus most likely to provide for the long-term persistence of the species, and in this finding we consider these older forest types as representative of high-quality habitat for the red tree vole.

Tree voles may tolerate some forest fragmentation, but the point at which forest gaps become large enough to impede their movements or successful dispersal is not known. Howell (1926, p. 40) suggested that "considerable" expanses of land without suitable trees are a barrier to tree vole movements. However, as noted earlier, known dispersal distances for red tree voles are quite short, ranging from 10 to 246 ft (3 to 75 m) (Swingle 2005, p. 63), with 1,115 ft (340 m) being the longest known dispersal distance (Biswell and Meslow, unpublished data referenced in USDA and USDI 2000b, p. 8). This suggests that relatively small distances, roughly less than 1,200 ft (366 m) between forest patches, may serve as effective barriers to dispersal or recolonization for red tree voles. Radio-collared tree voles crossed logging roads, first-order streams, and canopy gaps up to 82 ft (25 m) wide (Biswell and Meslow, unpublished data referenced in USDA and USDI 2000b, p. 8; Swingle and Forsman 2009, p. 283). Some of these crossings occurred on multiple occasions by a single vole. This suggests that "small forest gaps" (Swingle 2005, p. 79) may not greatly impair tree vole movement, but increasing gap size may be expected to limit tree vole movement. In addition, Swingle (2005, p. 79) suggested that the necessity of descending to the ground to cross openings may reduce survival. There are three records of red tree voles captured in clearcuts (Borrecco 1973, pp. 34, 36; Corn and Bury 1986, pp. 404–405; Verts and Carraway 1998, p. 310), in one case over 656 ft (200 m) from the forest edge. In two of these instances, the authors suggested the individuals were most likely in the act of dispersing.

In summary, based on our evaluation of the best scientific and commercial data available, as detailed above, for the purposes of this finding we consider older forests with late-successional characteristics to represent high-quality habitat for red tree voles, and younger forests in early-seral condition to represent low-quality, transitional habitat for red tree voles. In addition, we consider it likely that younger forests only play a role as interim, low-quality habitat for red tree voles if they occur in association with older forest patches or remnants.

Reproduction

Red tree vole litter sizes are among the smallest compared to other rodents of the same subfamily, averaging 2.9 young per litter (range 1 to 4) (Maser *et al.* 1981, p. 205; Verts and Carraway 1998, p. 310). Clifton (1960, pp. 119–120) reported that captive tree voles became sexually mature at 2.5 to 3.0 months of age. Females breed throughout the year, with most reproduction occurring between February and September (Swingle 2005, p. 71). Red tree voles are capable of breeding and becoming pregnant immediately after a litter is born (Clifton 1960, p. 130; Hamilton 1962, pp. 492–495; Brown 1964, pp. 647–648), resulting in the potential for females to have two litters of differently aged young in their nests (Swingle 2005, p. 71; Forsman *et al.* 2009a, p. 270). Captive tree voles may have litters just over a month apart (Clifton 1960, p. 130). Forsman *et al.* (2009a, p. 270) observed two female voles in the wild that produced litters at 30 to 35 day intervals. Young tree voles develop more slowly than similar-sized rodents of the same subfamily (Howell 1926, pp. 49–50; Maser *et al.* 1981, p. 205), first exiting the nest at 30 to 35 days old, and not dispersing until they are 47 to 60 days old (Swingle 2005, p. 63; Forsman *et al.* 2009a, pp. 268–269).

Diet

Tree voles are unique in that they feed exclusively on conifer needles and the tender bark of twigs that they harvest from conifers. In most of their range, they feed primarily on Douglas-fir (Howell 1926, p. 52; Benson and Borell 1931, p. 230; Maser *et al.* 1981, p. 205). In portions of the northern coastal counties of Oregon (Lincoln, Tillamook, and Clatsop), tree voles also consume needles from western hemlock and Sitka spruce, and in some parts of their range they feed on grand fir, bishop pine (*Pinus muricata*), and introduced Monterrey pine (*P. radiata*) (Jewett 1920, p. 166; Howell 1926, pp. 52–53; Walker 1930, p. 234; Wooster and Town 2002, pp. 182–183; Forsman and Swingle 2009, pers. comm.; Swingle 2010, pers. comm.). Conifer needles contain filamentous resin ducts that are filled with terpenoids, chemicals that serve as defensive mechanisms for trees by making the leaves unpalatable. Tree voles have adapted to their diet of conifer needles by stripping away these resin ducts and eating the more palatable portion of the needle (Benson and Borell 1931, pp. 228–230; Perry 1994, pp. 453–454; Maser 1998, pp. 220–221; Kelsey *et al.* 2009, entire). Resin ducts typically run the length of the needle, but may be located in different portions of the needle, depending on the tree species; this forces the tree vole to behave differently depending on the tree species on which they forage. As an example, the resin ducts in Douglas-fir needles are located along the outer edges of the needle, so tree voles remove the outside edge and consume the remaining middle portion of the needle. Conversely, the resin ducts of western hemlock are located away from the outside edges along the midline of the needle. Thus, voles foraging on hemlock needles will consume the outer edge of the needle and discard the center (Clifton 1960, pp. 35–45; Forsman and Swingle 2009, pers. comm.; Kelsey *et al.* 2009, entire; Maser 2009, pers. comm.).

Within the Sitka spruce plant series of the northern Oregon Coast Range of Oregon, tree voles appear to prefer, and perhaps require, a diet of western hemlock and Sitka spruce needles (Walker 1930, p. 234; Forsman and Swingle 2009, pers. comm.; Maser 2009, pers. comm.;). Voles in the Sitka spruce plant series rarely forage on Douglas-fir, even where it is available; foraging on Douglas-fir only becomes more evident where the Sitka spruce plant series transitions into the adjacent western hemlock series (Forsman and Swingle 2009, pers. comm.; Forsman and Swingle 2009, unpublished data). Maser (2009, pers. comm.) observed that tree voles adapted to a diet of western hemlock starved to death in captivity because they would not eat the Douglas-fir needles they were offered. Because the resin ducts of western hemlock, Sitka spruce, and Douglas-fir needles are in different locations on the needle, their removal requires a different behavior depending on which species is being eaten (Clifton 1960, pp. 35–49; Kelsey *et al.* 2009, entire). Maser (2009, pers. comm.) suspected that voles raised in stands of western hemlock never learned the required behavior for eating Douglas-fir, although Walker (1930, p. 234) observed a captive vole raised on hemlock needles that preferred hemlock but would eat fir or spruce in the absence of hemlock. Conversely, voles taken from Douglas-fir stands have been observed to eat both Douglas-fir and western hemlock in captivity (Clifton

1960, p. 44; Maser 2009, pers. comm.), although voles appear to be reluctant to switch between tree species (Walker 1930, p. 234; Forsman 2010, pers. comm.).

Tree voles appear to obtain water from their food and by licking water off of tree foliage (Clifton 1960, p. 49; Maser 1966, p. 148; Maser *et al.* 1981, p. 205; Carey 1996, p. 75). In keeping captive Sonoma tree voles, Hamilton (1962, p. 503) noted that it was important to keep leaves upon which they fed moist, otherwise the voles would lose weight and die. The need for free water in the form of rain or dew on foliage may explain why the distribution of tree voles is limited to relatively humid forests in western Oregon and California (Howell 1926, p. 40; Hamilton 1962, p. 503). However, there are no quantitative data on water consumption by tree voles, and some forests in which they occur (e.g., portions of southwestern Oregon) have little rain or dew during the summer months. How they are able to persist under such conditions is unclear.

Mortality

In the only quantitative study conducted to date, Swingle *et al.* (2010, p. 258) found that weasels (*Mustela* spp.) were the primary predators of red tree voles. However, many other animals feed on tree voles, including ringtails (*Bassariscus astutus*) (Alexander *et al.* 1994, p. 97), fisher (*Martes pennanti*) (Golightly *et al.* 2006, p. 17), northern spotted owls (Forsman *et al.*, 1984, p. 40), barred owls (*Strix varia)* (Wiens 2010, pers. comm.), and a variety of other nocturnal and diurnal raptors (Miller 1933, entire; Maser 1965a, entire; Maser 1965b, entire; Forsman and Maser 1970, entire; Reynolds 1970, entire; Graham and Mires 2005, entire). Other documented predators include the Steller's jay (*Cyanocitta stelleri*) (Howell 1926, p. 60), a gopher snake (*Pituophis catenifer*) (Swingle *et al.* 2010, p. 258), domestic dogs (*Canis familiaris*) (Swingle *et al.* 2010, p. 258), and house cats (*Felis catus*) (Swingle 2005, pp. 90–91). In addition, Maser (1966, p. 164) found tree vole nests that had been torn apart and inferred the destruction was likely caused by northern flying squirrels (*Glaucomys sabrinus*), raccoons (*Procyon lotor*), western gray squirrels (*Sciurus griseus*), or Douglas' squirrels (*Tamiasciurus douglasii*), apparently in search of young voles. Forsman (2010, pers. comm.) recorded video footage of northern flying squirrels, western gray squirrels, and Douglas' squirrels chasing tree voles or tearing into tree vole nests in what appeared to be attempts to capture voles.

Swingle *et al.* (2010, p. 259) estimated annual survival of radio-collared tree voles to be 15 percent. Little is known about the vulnerability of red tree voles to predators in different habitats. Swingle (2005, pp. 64, 90) found that of 25 documented cases of predation on radio-collared voles, most occurred in young (22–55 years old) forests (Forsman and Swingle 2009, pers. comm.). Predation by weasels, which accounted for 60 percent of the predation events, occurred only in the 22–55-year-old forests, and 80 percent of the weasel predation was on female voles. Most of the radio-collared sample consisted of females and were in young forest, so forest age and vole gender explained little of the variation in the data (Forsman 2010, pers. comm.; Swingle 2010, pers. comm.). Although there was no statistical difference in predation rates among forest ages and vole gender, Swingle *et al.* (2010, p. 260) suspected weasel predation on tree voles may be inversely proportional to nest height. Tree vole nests tend to be found in the lower portion of the tree crown (Gillesburg and Carey 1991, pp. 785–786; Swingle 2005, pp. 29–30), and tree vole nests tend to be higher above the ground in older stands or larger trees than in younger stands or smaller trees (Zentner 1966, pp. 18–20; Vrieze 1980, pp. 18, 32–33; Meiselman and Doyle 1996, p. 38; Swingle 2005, pp. 29–30). Thus, tree voles could be more prone to predation in shorter trees that comprise younger stands and limit the height of nests above the ground. Swingle *et al.* (2010, p. 261) also suggested that female tree voles may be more susceptible to predation than males because they occupy larger, more conspicuous nests and spend more time outside the nest collecting food for their young.

Other mortality sources include disease, old age, storms, forest fires, and logging (Maser *et al.* 1981, p. 206). Carey (1991, p. 8) suggested that forest fires and logging are far more important mortality factors than predation in limiting vole abundance.

Defining a Species Under the Act

Section 3(16) of the Act defines "species" to include any species or "subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature" (16 U.S.C. 1532(16)). Our implementing regulations at 50 CFR 424.11 provide further guidance for determining whether a particular taxon or population is a species for the purposes of the Act: "[T]he Secretary shall rely on standard taxonomic distinctions and the biological expertise of the Department and the scientific community concerning the relevant taxonomic group" (50 CFR 424.11(a)). As previously noted, we were petitioned to list the dusky tree vole as a subspecies of the red tree vole. The petitioners requested that if we found that the dusky tree vole was not a listable entity as a subspecies, then we subsequently consider whether it should be listed as the North Oregon Coast DPS of the red tree vole. Alternatively, the petitioners requested that the dusky tree vole be protected by listing the red tree vole because it is endangered or threatened in a significant portion of its range. The analysis to determine whether this is a viable subspecies or DPS according to section 3(16) of the Act follows.

Subspecies Analysis

There is no universally accepted definition of what constitutes a subspecies, and the use of the term subspecies may vary among taxonomic groups (Haig *et al.* 2006, entire). To be operationally useful, subspecies must be discernible from one another (i.e., diagnosable), not merely exhibit mean differences (Patten and Unitt 2002, pp. 28, 34). This element of "diagnosability," or the ability to consistently distinguish between populations, is a common thread that runs through all subspecies concepts. It is important to use multiple sources of information when evaluating a taxon's status. The greater the concurrence among multiple morphological, molecular, ecological, behavioral, and physiological characteristics, the higher the level of confidence in the taxonomic classification (Haig *et al.* 2006, p. 1591). To assess subspecies classification for the dusky tree vole, we evaluated all the available data to determine whether the evidence points to a consistent separation of the putative dusky tree voles from the remaining population of red tree voles. If the assessment of these multiple characteristics provides a clear and consistent separation of the putative dusky tree vole subspecies from the remaining red tree vole population, such that any individual from the range of the dusky tree vole would likely be correctly assigned to that subspecies on the basis of the suite of characteristics analyzed, that evidence would be considered indicative of a likely valid subspecies.

Geography

As described under *Range and Distribution*, there is no clear demarcation for the range of the putative dusky tree vole. All

descriptions include the western slope of the northern Oregon Coast Range, typically Tillamook and Lincoln Counties. Other descriptions expand this range to include the east slope of the Oregon Coast Range (Maser 1966, p. 16), and south to include the coastal portion of Douglas County (Maser 2009, pers. comm.). Still others suggest tree voles found in the foothills of the Cascade Range (Brown 1964, p. 648) and in the Columbia River Gorge (Howell 1926, p. 34) were dusky tree voles. Contemporary descriptions of the dusky tree vole range usually reference Johnson and George (1991, p. 12), who, despite not finding any strong morphometric or karyologic (chromosomal) differences between the subspecies, state the two taxa, "* * * now can be properly delineated geographically." Johnson and George (1991, p. 12) go on to describe the dusky tree vole range as the Pacific slope of the Oregon Coast Range in Tillamook and Lincoln Counties without substantiating the basis for their geographic delineation. There is thus no clear and consistent description of what may constitute the range of the "dusky tree vole."

Blood Proteins

Johnson (1968, p. 27) analyzed blood proteins of dusky tree voles, red tree voles, and heather voles (*Phenacomys intermedius*) to determine whether *Arborimus* should remain as a subgenus under *Phenacomys* or be elevated to a full genus. Multiple authors cite this work to support the classification of the dusky tree vole as a subspecies of the red tree vole (e.g., Maser and Storm 1970, p. 64; Hall 1981, p. 788; Johnson and George 1991, p. 1). However, we fail to reach this conclusion based on Johnson's (1968, p. 27) work. Johnson (1968, p. 27) describes his results as follows:

> The tree mice of the species *Arborimus longicaudus* (including A. silvicola) have in the past been included with the heather vole, *Phenacomys intermedius*. Two specimens of *P. intermedius* (of two subspecies) and 16 specimens of *A. longicaudus* (of two subspecies) were examined. In these two species the serum proteins and hemoglobins have suggested combining the named forms of *Arborimus* into a single species, and separating the genera *Arborimus* and *Phenacomys*.

Although Johnson (1968, p. 27) concluded that the named forms *longicaudus* and *silvicola* should be combined, he did not make any further determination on whether or not *silvicola* should be retained as a subspecies. We therefore question whether Johnson (1968, p. 27) definitively designates *silvicola* as a subspecies. While Hall (1981, p. 788) cited Johnson (1968, p. 27) as suggesting a "subspecific relationship of the two taxa," he also notes that this designation is a "provisional arrangement" because of the existing uncertainty about the relationship of the two taxa.

Genetics

In this section and the *Summary* section below we describe and analyze the research on tree vole genetics as it relates to answering the question of whether or not the dusky tree vole is a taxonomically valid subspecies of the red tree vole. This should not be confused with our analysis later in this document (see Distinct Vertebrate Population Segment Analysis) wherein we evaluate the genetics research as it relates to its contribution towards determining the discreteness and significance of a potential DPS of the red tree vole.

Bellinger *et al.* (2005, p. 207) failed to find detectable genetic differences between dusky and red tree voles, suggesting that subspecific status may not be warranted. Miller *et al.* (2006a, p. 145) found three distinct genetic entities in their analysis of mitochondrial DNA of red tree voles throughout Oregon. For this analysis, we are interested in the genetic entity that Miller *et al.* (2006a, p. 151) labeled the "Northern Coast range" sequence. While Miller *et al.* (2006a, entire) do not describe specific boundaries for this entity, the sampling locations in this entity are distributed across the northern Oregon Coast Range, extending south to latitudes roughly equivalent with the cities of Eugene and Florence (see Figure 1 for city locations). This genetic entity encapsulates most of the range descriptions of the putative dusky tree vole. Although the objective of Miller *et al.* (2006a, entire) was not to address the taxonomy of the dusky tree vole, in subsequent conversations with the authors, they concluded that the genetic differences between these groups were sufficient to potentially support subspecies recognition if there were congruent differentiations in other characteristics (Miller and Haig 2009, pers. comm.).

Morphology

The dusky tree vole has been described as darker than the red tree vole (Bailey 1936, p. 198; Maser *et al.* 1981, p. 201; Hall 1981, p. 788; Johnson and George 1991, p. 12), but there has been no analysis to indicate an identifiable change in coat color either between the two entities or that corresponds with the boundaries of the haplotype groups found in Miller *et al.* (2006a, entire) (see *Genetics*, above). Maser (2007, pers. comm.; 2009, pers. comm.) postulated that the darker coat color in voles from the northern Oregon Coast Range was due to the denser, darker forests in which a darker coat provided a more cryptic coloration than a lighter coat color. Assuming this hypothesis is correct, because there is a gradual transition of tree species and forest composition as one progresses south in the Coast Range, it is reasonable to hypothesize that a corresponding change in coat color may also be gradual rather than abrupt and thus not easily discernable from the red tree vole. This needs to be evaluated using a consistent and repeatable method for comparing pelage color. Such an analysis is currently being conducted but is not available for this review (Forsman 2010, pers. comm.).

In measuring multiple morphometric features, Johnson and George (1991, p. 5) found statistical differences distinguishing Oregon tree voles from California samples, but were not able to easily detect discernable differences between samples within Oregon or California. Miller *et al.* (2010, p. 69) found statistically significant differences in some external morphological features between putative dusky tree voles and red tree voles. Although these differences were statistically significant in distinguishing between groups of tree voles, they were of little diagnostic utility because they were so subtle they could not be used to reliably classify an individual tree vole as a dusky tree vole or a red tree vole (Miller *et al.* 2010, p. 67). A possible explanation for the statistical difference, yet lack of diagnostic utility, is that the morphological features measured also exhibited a positive correlation with latitude; tree voles from the northern part of the range were larger than tree voles from the southern part of the range. This is a clinal pattern consistent with Bergmann's Rule, an ecological principle stating that larger forms of species tend to be associated with cooler climate and higher latitude (Miller *et al.* 2010, p. 69).

Behavior

Tree voles within the narrow band of Sitka spruce found along the coastal portion of the northern Oregon Coast Range north of Newport exhibit a different diet than voles in the rest of the range, foraging on Sitka spruce or western hemlock rather than on Douglas-fir (Walker 1930, p. 234; Forsman and Swingle 2009, pers. comm.) (see above under *Diet*). This diet requires a different treatment of needles

than in other areas because resin ducts in spruce and hemlock are located in different parts of the needle than in Douglas-fir (Kelsey *et al.* 2009, pp. 12–13). While this behavioral difference exists primarily in the Sitka spruce plant series of the northern Oregon Coast Range, it comprises only a small portion of the area within the northern Coast Range genetic sequence found by Miller *et al.* (2006a, pp. 150–151; see *Genetics*, above) and does not correspond to the general boundaries of that genetic entity, nor does it correspond to any of the various boundaries of the putative dusky tree vole's range.

Summary

Bellinger *et al.* (2005, p. 207) concluded that the absence of detectable genetic differences between red tree voles and putative dusky tree voles, combined with the lack of consistently verifiable morphological differences, suggested that the subspecific status of the dusky tree vole might not be warranted. Miller *et al.* (2006a, entire) found evidence of marked genetic differences in the red tree vole that could indicate the existence of a possible subspecies, although they did not explicitly address the implications of their work on red tree vole taxonomy. Subsequent conversations with the authors, however, indicated that observed genetic differences were sufficient to potentially support recognition of the dusky tree vole as a subspecies if there were additional differentiations in identifiable characteristics and if the boundaries of those differentiations were congruent with the "Northern Coast range" genetic grouping identified in Miller *et al.* (2006a, p. 151). However, our review of the best and most current data on the genetics, behavior, morphology, and range of the putative dusky tree vole reveals no other characteristics of diagnostic utility that correspond with the "Northern Coast range" haplotype grouping identified by Miller *et al.* (2006a, p. 151). There is not a consistent and well-substantiated range description of the dusky tree vole. Although some morphological differences may occur between the red tree vole and the putative dusky tree vole, these differences have little diagnostic utility and may only represent a clinal variation, as would be expected between northern and southern populations of the red tree vole based on Bergmann's Rule (an ecogeographic principle that states that animals at more northerly latitudes tend to be larger than individuals of the same species at more southerly latitudes) (Miller *et al.* 2010, entire). The prevailing behavior of foraging on western hemlock and Sitka spruce within the Sitka spruce plant series does not correspond to the geographic range of the "Northern Coast range" genetic entity described by Miller *et al.* (2006a, p. 151), but comprises only a small portion of the range of that haplotype group. Presumptive differences in coloration, which served as one of the primary bases for the original subspecies distinction of the dusky tree vole, have never been quantified. Such a conventional approach to subspecies designation, used historically and frequently based on apparent geographic or clinal variation, is often not supported when tested by more rigorous analyses of multiple characters (e.g., Thorpe 1987, pp. 7, 9).

Given the lack of diagnostic characteristics that correspond with the "Northern Coast range" haplotype group described by Miller *et al.* (2006a, p. 151) and the findings of Bellinger *et al.* (2005 entire) and Miller *et al.* (2010 entire) that there are no detectable genetic or morphological differences yet found between dusky tree voles and red tree voles, we do not believe there is sufficient evidence to indicate that the dusky tree vole is a distinct subspecies. Although the dusky tree vole was recognized as a subspecies in Wilson and Reeder's Mammal Species of the World (2005, pp. 962–963), we note that this reference did not recognize, or was published prior to, the availability of the work of Bellinger *et al.* (2005, entire) and Miller *et al.* (2006a, entire; 2010 entire). Subsequent to the publication of some of these latter works, the Oregon Natural Heritage Information Center ceased recognition of the dusky tree vole as a subspecies (ORNHIC 2007, p. 17), as did the U.S. Forest Service and Bureau of Land Management's Survey and Manage program (USDA and USDI 2007, p. 289). Finally, the dusky tree vole is not recognized as a valid subspecies of the red tree vole in the Integrated Taxonomic Information System (ITIS 2011). Therefore, based on the best available scientific and commercial data, as described above, we have concluded that the dusky tree vole is not a valid subspecies, and therefore is not eligible for listing as such under the Act. We must next evaluate whether the North Oregon Coast population of the red tree vole is a DPS to determine whether it would constitute a listable entity under the Act.

Distinct Vertebrate Population Segment Analysis

The Service and the National Marine Fisheries Service (now the National Oceanic and Atmospheric Administration—Fisheries), published the Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act (DPS Policy) in the **Federal Register** on February 7, 1996 (61 FR 4722) to guide the implementation of the DPS provisions of the Act. Under the DPS Policy, three elements are considered in the decision regarding the establishment and classification of a population of a vertebrate species as a possible DPS. These are applied similarly for additions to and removals from the Lists of Endangered and Threatened Wildlife and Plants. These elements are:

(1) The discreteness of a population in relation to the remainder of the species to which it belongs;

(2) The significance of the population segment to the species to which it belongs; and

(3) The population segment's conservation status in relation to the Act's standards for listing, delisting, or reclassification (i.e., is the population segment endangered or threatened?).

In the petition, we were asked to consider listing a DPS for the red tree vole in the North Oregon Coast portion of its range if we did not conclude that the dusky tree vole was a valid subspecies of the red tree vole. In accordance with our DPS Policy, this section details our analysis of the first two elements, described above, to assess whether the vertebrate population segment under consideration for listing may qualify as a DPS.

Specific to red tree vole genetics, as we noted above (see Subspecies Analysis), in this section we have reviewed the research on red tree vole genetics and evaluated whether or not the genetics evidence supports identifying a population segment that meets the discreteness and significance standards described above. Although genetic research indicates that the putative dusky tree vole may not be a valid subspecies (e.g. Bellinger *et al.* 2005, entire; Miller *et al.* 2010, entire), whether or not a population segment is discrete and significant is a different question and these works do not exclude the possibility that there is a discrete and significant population segment for the red tree vole.

Discreteness

The DPS Policy's standard for discreteness requires an entity to be adequately defined and described in some way that distinguishes it from other representatives of its species. A population segment of a vertebrate species may be considered discrete if it

satisfies either of the following two conditions:

(1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors (quantitative measures of genetic or morphological discontinuity may provide evidence of this separation); or

(2) It is delimited by international governmental boundaries within which significant differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist.

The North Oregon Coast portion of the red tree vole range is markedly separated from the rest of the species' range based on the genetic discontinuities described by Miller *et al.* (2006a, pp. 150–151). Miller *et al.* (2006a, entire) examined phylogeographical patterns by analyzing mitochondrial control region sequences of 169 red tree voles sampled from 18 areas across the range of the species in Oregon. In addition, they analyzed Cytochrome *b* sequences from a subset of these samples. Through phylogenetic network and spatial genetic analyses, the researchers found a primary genetic discontinuity separating red tree voles from the northern (areas A through F (Miller *et al.* 2006a, Figure 1, pp. 146, 151–152)) and southern (areas G through R (Miller *et al.* 2006a, Figure 1, pp. 146, 151–152)) sampling areas; a secondary discontinuity separated the northern sampling areas into eastern (areas B, E, and G (Miller *et al.* 2006a, Figure 1, pp. 146, 151–152)) and western (areas A, C, D, and F (Miller *et al.* 2006a, Figure 1, pp. 146, 151–152)) subdivisions separated by the Willamette Valley (Miller *et al.* 2006a, pp. 150–153). Miller *et al.* (2006a, p. 151) labeled the eastern subdivision as the "Northern Cascade range" sequence, and the western subdivision the "Northern Coast range" sequence, reflecting the associated mountain ranges. As described in the *Taxonomy and Description* section, above, genetic researchers considered the degree of genetic difference between the 3 groupings of red tree voles to be highly significant (Miller and Haig 2009, pers. comm.). We thus consider the population of red tree voles represented by the "Northern Coast range" haplotypes to be markedly separated from other populations of the taxon as evidenced by quantitative measures of genetic discontinuity.

Red tree voles within the "Northern Coast range" haplotype (genetic) group identified by Miller *et al.* (2006a, pp. 150–151) came from several specific sampling locations, but the researchers did not attempt to delineate precise boundaries between the three genetic groupings of red tree voles in Oregon. We have therefore defined the boundary of the northern Coast Range population of red tree voles based on a combination of convergent genetic, physical, and ecological characteristics. To assist in this delineation, we relied in part on the physiographic provinces used in the Northwest Forest Plan because they incorporate physical, biological, and environmental factors that shape large landscapes (FEMAT 1993, p. IV–5). In addition, much of the forest-related research relevant to our analysis has been based on these province delineations. We interpret the area occupied by the "Northern Coast range" genetic group of red tree voles to include that portion of the Oregon Coast Range Physiographic Province (FEMAT 1993, pp. II–27, IV–7) from the Columbia River south to the Siuslaw River. In addition, the Willamette Valley to the east of the northern Oregon Coast Range provides a geographic barrier for genetic exchange between red tree voles found in the northern Oregon Coast Range and those found in the northern Cascade Range; the western edge of the Willamette Valley thus forms a natural eastern boundary for the red tree vole population in the northern Oregon Coast Range.

As for the southern limit of the "Northern Coast range" haplotypes, there is no identifiable geographic boundary that may act as a genetic barrier. We chose the Siuslaw River as an identifiable feature that approximates a divide between Miller *et al.*'s (2006a, pp. 150–151) southern and northern haplotypes in the Oregon Coast Range. This is an area where vegetation transitions from more mesic vegetation species in the north to drier vegetation in the south (Franklin and Dyrness 1973, p. 72; McCain 2009, pers. comm.). In addition, the Siuslaw River creates an approximate break between ecosystems that experience longer fire return intervals to the north and shorter return intervals to the south (Hardt 2009, pers. comm.). This area transitions into the southern end of the western hemlock vegetation zone, which has a patchier fire severity distribution as compared to the northern Oregon Coast Range, which is characterized by high fire severities (Agee 1993, pp. 211–213). This delineation of the boundary of the northern Oregon Coast Range population of the red tree vole, described above, is shown in Figure 2.

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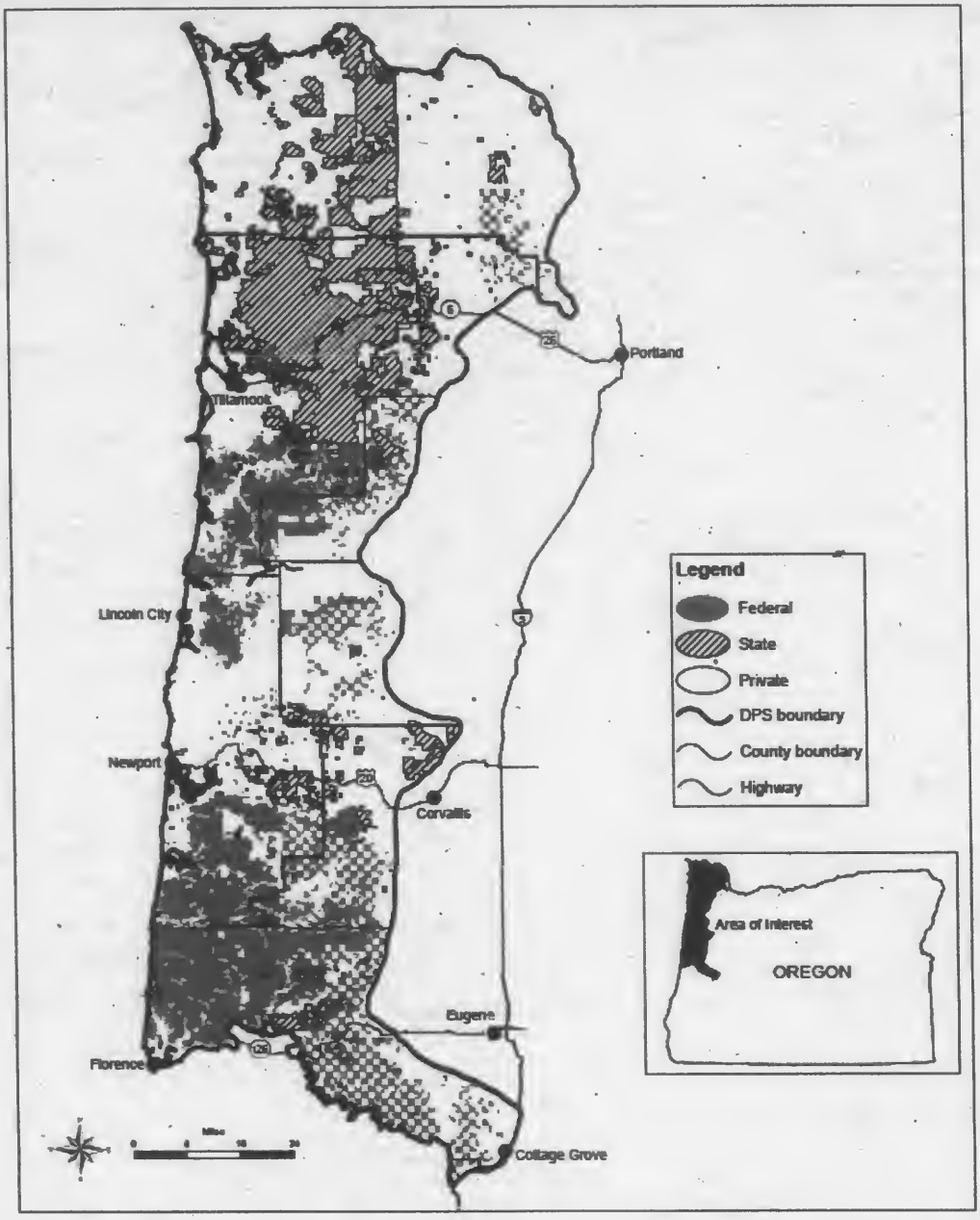

Figure 2. North Oregon Coast Distinct Population Segment (DPS) of the Red Tree Vole.

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There is some overlap of haplotypes in the lineage of sequences unique to the northern Oregon Coast Range and the southern portion of the tree vole range (Miller *et al.* 2006a, pp. 153–154). This overlap, combined with the absence of an obvious geographical barrier to genetic interchange, leads to a hypothesis that the observed genetic discontinuity in this area represents a zone of secondary contact between lineages that were divided during the most recent glaciation approximately 12,000 years ago (Miller *et al.* 2006a, p. 154). Although the Cordilleran ice sheet of the Wisconsin glaciation did not overlay present-day Oregon, associated climate change during the glaciation fragmented the forest landscape (Bonnicksen 2000, pp. 8–10, 15–16, 24–25). Subalpine forests occupied much of northwestern Oregon, with western hemlock and Sitka spruce remaining only in isolated, protected areas (Bonnicksen 2000, p. 25). These potential bottlenecks in northern populations may have separated red tree voles into separate lineages that continue to exist today (Miller *et al.* 2006a, p. 154). A similar genetic discontinuity is found in the southern torrent salamander (*Rhyacotriton*

variegatus) in this vicinity (Miller *et al.* 2006b, p. 565). In addition, multiple plant species exhibit genetic discontinuities in the vicinity of the central Oregon Coast (Soltis *et al.* 1997, pp. 353–359).

We conclude that the North Oregon Coast population of the red tree vole is markedly separated from the remainder of the red tree vole population and meets the discreteness criterion for the DPS Policy based on quantitative measures of genetic discontinuity. Genetic distribution in the red tree vole is not random, with a markedly distinct group of haplotypes located in the northern Oregon coast. The Willamette Valley likely serves as a genetic barrier between the North Oregon Coast tree vole population and tree voles in the northern Cascades. While there is no currently identifiable geographic barrier to the south, glacial activity at the end of the Pleistocene Epoch may have been responsible for creating multiple lineages of red tree voles, as well as other species, that are still identifiable today. The Siuslaw River is an identifiable feature that appears to be approximately coincident with the southernmost boundary of the "Northern Coast range" genetic group of the red tree vole (Miller *et al.* 2006a, p. 151).

Significance

If we have determined that a vertebrate population segment is discrete under our DPS Policy, we then consider its biological and ecological significance to the taxon to which it belongs in light of Congressional guidance (see Senate Report 151, 96th Congress, 1st Session) that the authority to list a DPS be used "sparingly" while encouraging the conservation of genetic diversity. To evaluate whether a discrete vertebrate population may be significant to the taxon to which it belongs, we consider the best available scientific evidence. As precise circumstances are likely to vary considerably from case to case, the DPS Policy does not describe all the classes of information that might be used in determining the biological and ecological significance of a discrete population. However, the DPS Policy describes four possible classes of information that provide evidence of a population segment's biological and ecological significance to the taxon to which it belongs. This evaluation may include, but is not limited to:

(1) Persistence of the discrete population segment in an ecological setting that is unusual or unique for the taxon;

(2) Evidence that loss of the discrete population segment would result in a significant gap in the range of the taxon;

(3) Evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historical range; or

(4) Evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

Persistence of the DPS in an ecological setting that is unique or unusual for the taxon. The Sitka spruce plant series in the northern Oregon coast appears to be a unique ecological setting for a portion of the population of the red tree vole that was determined to be discrete. The Sitka spruce series occurs in the strongly maritime climate near the ocean, following the coastal fog up river valleys. Sitka spruce ranges from southcentral Alaska to northern California, with the most extensive portion of its range occurring in southeastern Alaska and northern British Columbia, Canada (Burns and Honkala 1990, Sitka spruce chapter). Although present at some level along most of the Oregon coastline, it is more limited in this southern portion of its range, but extends much farther inland toward the northern part of the Oregon Coast Range than in the southern portion, where ridge systems along the coastline intercept the fog layer (Franklin and Dyrness 1973, pp. 58–70; McCain and Diaz 2002, p. 59). With the exception of scattered small patches on the southern and central Oregon coast, the majority of the Sitka spruce plant series in Oregon lies in the area encompassed by the North Oregon Coast population of red tree voles (McCain and Diaz 2002, p. 61). It is in the Sitka spruce plant series that the alternative tree vole diet of western hemlock and Sitka spruce needles predominates (see *Diet* section). Douglas-fir appears to have been historically uncommon in the Sitka spruce series (Agee 1993, p. 194). Little variation in annual temperature, minor summer plant moisture stress, and very high precipitation make the Sitka spruce series extremely productive, producing large trees relatively quickly, and containing plant associations that tend to develop and maintain older forest characteristics important to a variety of wildlife species.

The Sitka spruce plant series is the only portion of the red tree vole range where the consumption of western hemlock and Sitka spruce is the dominant foraging behavior. Within the extent of the "Northern Coast range" genetic grouping identified by Miller *et al.* (2006a, p. 151), this behavior is exhibited by tree voles in the western portions of Lincoln, Tillamook, and Clatsop Counties. While there is evidence of individual red tree voles elsewhere in the range foraging on species other than Douglas-fir, these are rare occurrences and nowhere else in the range of the red tree vole does a non-Douglas-fir diet dominate. This alternative diet appears well ingrained, as evidenced by wild voles adapted to a diet of western hemlock refusing to eat Douglas-fir in captivity and ultimately starving to death (Maser 2009, pers. comm.). This ecological setting has resulted in a foraging behavior that appears relatively inflexible and unique to the red tree voles in this area, as red tree voles in forests dominated by Douglas-fir apparently exhibit greater behavioral plasticity and have been observed to eat western hemlock and Sitka spruce in captivity (Clifton 1960, p. 44; Maser 2009, pers. comm.).

The ecological setting and unique foraging behavior of red tree voles in the northern Oregon Coast Range create different selective pressures for the animals in this portion of their range relative to red tree voles in the remainder of the taxon's range. Such selective pressures are the foundation of speciation, and such distinct traits may be crucial to species adaptation in the face of changing environments (Lesica and Allendorf 1995, p. 756). We find the discrete population of tree voles in the northern Oregon Coast Range contains a unique ecological setting in the form of the Sitka spruce plant series because the plant series is extremely limited within the red tree vole range, and because of the relatively unique and inflexible foraging behavior tied to this plant series that may be indicative of ongoing speciation. However, the geographic range in which this ecological setting and associated unusual foraging behavior is expressed does not correspond to the range of the tree voles identified under the discreteness criterion, above, as it occurs in only a subset of the range of tree voles with the "Northern Coast range" genetic grouping (Miller *et al.* 2006a, p. 151). Therefore, although we recognize this ecological setting and the associated unique foraging behavior of tree voles to be potentially important from an evolutionary perspective, we find that the discrete population of tree voles in the northern Coast Range as a whole do not meet this significance criterion under the DPS policy.

Evidence that loss of the DPS would result in a significant gap in the range of the taxon. The loss of the North

Oregon Coast portion of the red tree vole range would result in a roughly 24 percent reduction in the range of the red tree vole. This loss is significant for multiple reasons, in addition to the fact that it represents nearly one-quarter of the total range of the species. For one, it would occur in the part of the range where the alternative foraging behavior of feeding on spruce and hemlock is the dominant behavior observed. Although this behavior is expressed in only a subset of this portion of the range, it is unique to this portion of the range and is of potential evolutionary significance, therefore its loss would be significant to the taxon as a whole. Secondly, while loss of the North Oregon Coast population would not create discontinuity in the remaining range, species at the edge of their range may be important in maintaining opportunities for speciation and future biodiversity (Fraser 1999, p. 50), allowing adaptation to future environmental changes (Lesica and Allendorf 1995, p. 756). Furthermore, peripheral populations may represent refugia for species as their range is reduced, as described by Lomolino and Channell (1995, p. 339), who found range collapses in mammal species to be directed towards the periphery. Genetically divergent peripheral populations, such as the North Oregon Coast population of the red tree vole, are often of disproportionate importance to the species in terms of maintaining genetic diversity and therefore the capacity for evolutionary adaptation (Lesica and Allendorf 1995, p. 756). Finally, in the face of predictions that climate change will result in species' ranges shifting northward and to higher elevations (Parmesan 2006, pp. 648–649; IPCC 2007, p. 8; Marris 2007, entire) (see *Factor E. Other Natural or Manmade Factors Affecting the Species' Continued Existence*), the northern Oregon Coast Range may become a valuable refugium from climate change effects for the species, as it includes the northernmost portion of the red tree vole's range as well as higher elevations near the Oregon Coast Range summit. Based on the above considerations, we therefore conclude that loss of the North Oregon Coast population of the red tree vole would result in a significant gap in the range of the taxon.

Evidence that the DPS represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historical range. As part of a determination of significance, our DPS Policy suggests that we consider whether there is evidence that the population represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historical range. The North Oregon Coast population of the red tree vole is not the only surviving natural occurrence of the species and has not been introduced outside of its historical range. Consequently, this factor is not relevant to our determination regarding significance.

Evidence that the DPS differs markedly from other populations of the species in its genetic characteristics. Red tree voles exhibit marked genetic structure. As described under *Discreteness*, above, Miller *et al.* (2006a, entire) characterized patterns of genetic divergence across the range of the red tree vole in western Oregon based on analyses of mitochondrial DNA from 18 sampling areas. The results of their spatial analysis of molecular variance revealed three distinctive genetic groupings of red tree voles in Oregon: A "southern" haplotype group, and a "northern" haplotype group that was further subdivided into 2 groups, the "Northern Cascade range" and "Northern Coast range" groups (Miller *et al.* 2006a, Figure 3, p. 151). The sampling areas that correspond to the "Northern Coast range" subdivision of the "northern" group (Areas A, C, D, and F) correspond to the entity we have described here as the North Oregon Coast population of the red tree vole. In the 4 sampling areas for the "Northern Coast range" genetic sequence (Miller *et al.* 2006a, p. 151), 20 out of the 21 D-loop haplotypes identified were unique to those locations, and in 3 of 4 sampling areas, 100 percent of the individuals sampled had a location-specific haplotype (60 percent of the individuals had a location-specific haplotype in the fourth sampling area; a single haplotype from Area C was also detected in Area N) (Miller *et al.* 2006a, Table 1, p. 148; Appendix, pp. 158–159). Although the researchers could not identify a strict discontinuity or barrier between the northern and southern groupings, which exhibited the greatest genetic distances, they suggest that the Willamette Valley serves as an important phylogeographical barrier that is likely responsible for the secondary genetic discontinuity identified between red tree voles in the western ("Northern Coast range" sequence) and eastern ("Northern Cascade range" sequence) portions of the northern haplotypes group (Miller *et al.* 2006a, pp. 151, 155).

Loss of the North Oregon Coast population of the red tree vole would eliminate a unique set of genetic haplotypes from the red tree vole population. Retaining genetic variation provides a wider capability for species to adapt to changing environmental conditions (Frankham *et al.* 2002, p. 46). Peripheral populations that are known to be genetically divergent from other conspecific populations, such as the North Oregon Coast population of the red tree vole, may have great conservation value in providing a species with the capacity to adapt and evolve in response to accelerated environmental changes (Lesica and Allendorf 1995, p. 757). Changing environmental conditions are almost a certainty for the red tree vole, given the prevailing recognition that warming of the climate system is unequivocal (IPCC 2007, p. 30). The importance of maximizing the genetic capacity to adapt and respond to the environmental changes anticipated is therefore magnified. Furthermore, preservation of red tree voles and their unique genetic composition at the northern extent of their range may be particularly important in the face of climate change, as most northern-hemisphere temperate species are shifting their ranges northward in response to that phenomenon, and species that cannot shift northward have suffered range contractions from loss of the southernmost populations (Parmesan 2006, pp. 647–648, 753; IPCC 2007, p. 8). Given that the Columbia River presents an apparent absolute barrier to northward expansion of the species, the northern Coast Range population of the red tree vole may provide an important refugium for the persistence of the species if more southerly populations are extirpated in the face of climate change. Losing an entire unique genetic component of the red tree vole, with its inherent adaptive capabilities, is significant and could compromise the long-term viability of the species as a whole. We therefore conclude the marked difference in genetic characteristics of the North Oregon Coast population relative to other populations of the red tree vole meets the significance criterion of the DPS Policy.

DPS Conclusion

We have evaluated the North Oregon Coast population of the red tree vole to determine whether it meets the definition of a DPS, addressing discreteness and significance as required by our policy. We have considered the genetic differences of the North Oregon Coast population relative to the remainder of the taxon, the ecological setting of the northern Oregon Coast Range, and the proportion

of the range of the red tree vole that the North Oregon Coast population comprises. We conclude that the North Oregon Coast population of the red tree voles is a valid distinct population segment under the 1996 DPS Policy (Figure 2). The North Oregon Coast population meets the discreteness criterion of the DPS Policy because it is markedly separated from the remainder of the taxon based on genetic differences. Genetic distribution in the red tree vole is not random, but exhibits a markedly distinct group of haplotypes located in the northern Oregon Coast Range (Miller *et al.* 2006a, entire). We also conclude that the North Oregon Coast population of red tree voles is significant on multiple accounts. The loss of this population would virtually eliminate a unique genetic component of the red tree vole, substantially reducing genetic diversity and consequently limiting the species' ability to evolve and adapt to changing environments. Loss of this population, which comprises 24 percent of the range of the red tree vole, would result in a significant gap in the range, primarily because of the value of peripheral populations in maintaining diversity and evolutionary adaptation, and because this area may provide a valuable refugium in the event of predicted climate change. The loss of red tree voles in the northern Oregon Coast Range would also result in the loss of a unique alternative foraging behavior exhibited by tree voles in the Sitka spruce plant series. Although this behavior occurs in a subset of the area encompassed by the North Oregon Coast population (Forsman and Swingle 2009, unpublished data), it is of potential evolutionary significance to the species; therefore the loss of that portion of the species' range that includes this subpopulation would be of significance to the taxon as a whole.

Because this population segment meets both the discreteness and significance elements of our DPS Policy, the North Oregon Coast population segment of the red tree vole qualifies as a DPS in accordance with our DPS Policy, and as such, is a listable entity under the Act (hereafter "North Oregon Coast DPS" of the red tree vole). Because we have determined the DPS to be a listable entity, we do not need to analyze the alternative presented by the petitioners, which was protecting what they labeled the dusky tree vole via listing the red tree vole because it is endangered or threatened in a significant portion of its range. Below we provide an analysis of threats to the North Oregon Coast DPS of the red tree vole, based on the five listing factors established by the Act.

Summary of Information Pertaining to the Five Factors

Section 4 of the Act (16 U.S.C. 1533), and implementing regulations (50 CFR part 424) set forth procedures for adding species to, removing species from, or reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, a species may be determined to be endangered or threatened based on any of the following five factors:

(1) The present or threatened destruction, modification, or curtailment of its habitat or range;

(2) Overutilization for commercial, recreational, scientific, or educational purposes;

(3) Disease or predation;

(4) The inadequacy of existing regulatory mechanisms; and

(5) Other natural or manmade factors affecting its continued existence.

In making this finding, information pertaining to the North Oregon Coast DPS of the red tree vole in relation to the five factors provided in section 4(a)(1) of the Act is discussed below. In considering what factors might constitute threats to a species, we must look beyond the exposure of the species to a particular factor to evaluate whether the species may respond to that factor in a way that causes actual impacts to the species. If there is exposure to a factor and the species responds negatively, the factor may be a threat and, during the status review, we attempt to determine how significant a threat it is. The identification of factors that could impact a species negatively may not be sufficient to compel a finding that the species warrants listing. The information must include evidence sufficient to suggest that these factors, singly or in combination, are operative threats that act on the species to the point that the species may meet the definition of endangered or threatened under the Act.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Past and Current Range and Abundance

Because of its arboreal existence and difficulty to observe and capture, little is known about the past and current population sizes of red tree voles. It is difficult to accurately estimate the size of a local tree vole population, let alone the population of the entire species (Howell 1926, p. 56; Blois and Arbogast 2006, p. 958). Estimates indicate that observers using ground-based survey methods may only see approximately half of the nests, with a bias towards observing more nests in younger forests than in older forests due to the greater visibility (Howell 1926, p. 45; Swingle 2005, pp. 78, 80–81; Swingle and Forsman 2009, p. 284). While nests can be counted and assessments have been made of the activity status of the nests, translating nest counts to numbers of voles does not yield good population estimates because some nests will be missed, some individuals occupy multiple nests, and determining whether nests are actively occupied is not possible without climbing to the nests and dissecting or probing them for voles (Swingle and Forsman 2009, p. 284). Using the presence or absence of green resin ducts and cuttings to determine the activity status of nests, which formerly had been a common method used in tree vole surveys, is now known to be unreliable for assessing actual nest occupancy by voles because the resin ducts can retain a fresh appearance for long periods of time if stored in the nest or out of sunlight, resulting in potential overestimates of active nest occupancy (USDA and USDI 2007, p. 290).

Although historical observations of tree voles are useful for assessing the range of the species, they may also be biased because collectors did not sample randomly. Thus, historical locations of tree voles tend to occur in clusters where a few collectors spent a lot of time searching for them. Until extensive surveys were conducted by the Forest Service and BLM as part of the Survey and Manage program adopted in 1994 under the NWFP, much of the range of the red tree vole had never been searched. The lack of historical documentation of tree vole presence thus cannot be interpreted as meaning that tree voles had limited populations or were historically absent from an area, especially if that area formerly provided suitable forest habitat for tree voles and was contiguous with known occupied areas. Surveys by naturalists in the late 1800s and early 1900s were more of an inventory to find new species and to determine species presence as opposed to determining abundance of a particular species (Jobanek 1988, p. 370). Only portions of Oregon were surveyed, and coverage was cursory and localized. Given the arboreal existence of the red tree vole and difficulty of finding and observing them, few specimens were collected or observed until more was understood about their life history (Bailey 1936, p. 195; Jobanek 1988, pp. 380–381). Many

nests were simply inaccessible to early naturalists. Nests were often high up in big trees, many of which were too large to climb without the benefit of modern climbing equipment, or the trees lacked enough branches on the lower bole to readily free-climb (e.g. Jobanek 1988, p. 391). Howell (1921, p. 99) noted that there was little hope for finding tree voles in virgin timber because of the large trees and the abundant moss that might conceal "a score of hidden nests." Vernon Bailey, Chief Naturalist of the U.S. Bureau of Biological Survey, considered the red tree vole to be abundant in the wild yet rare in museum collections because of the difficulty in collecting them (Jobanek 1988, p. 382). Murray Johnson, the most prolific early collector of tree voles, spent most of his time searching in young forests because he could not climb big trees (Forsman 2010, pers. comm.).

Red tree voles are found on both the eastern and western slopes of the Oregon Coast Range. Although there are no records of red tree voles in Clatsop County north of Saddle Mountain or in Columbia County, there is no reason to believe that tree voles did not once occur there given the presence of historical habitat (see *Range and Distribution*). There is a gap in the distribution of tree vole specimens and nests south of Saddle Mountain State Park in south-central Clatsop County, through the eastern two-thirds of Tillamook County south to the town of Tillamook (Forsman *et al.* 2009b, p. 229). There are no historical records of voles collected in this area, but there is also no evidence that early naturalists searched this area for tree voles. This gap in the range corresponds roughly with the area of the Tillamook burn, a stand-replacing fire that burned over 300,000 acres (121,400 ha) in 1933 (Pyne 1982, pp. 330–331). This area reburned in three successive fires over the next 18 years, for a combined total burn area of 350,000 acres (141,650 ha) (Pyne 1982, pp. 330–331). It is reasonable to conclude that voles were present in this area prior to the fire, considering that much of the burned area contained older forest similar to forests occupied by tree voles in areas adjacent to the burn.

Extensive surveys done throughout the range of the red tree vole as part of the NWFP Survey and Manage program have resulted in information that has helped to refine the distribution of the red tree vole (USDA and USDI 2000a, p. 376; USDA and USDI 2007, pp. 289–290). Information gleaned from these more recent surveys indicate that tree voles continue to be widely distributed throughout much of their range in Oregon with the exception of the northern Oregon Coast Range, particularly the area within the DPS north of Highway 20. This portion of the Coast Range north of Highway 20 accounts for nearly three-quarters of the DPS. Within the DPS, 36 percent of the Federal land, 92 percent of the State and County ownership, and 77 percent of the private ownership lies north of Highway 20 (Figure 2). In other words, this portion of the DPS is primarily in State, County, and private ownership, with relatively little Federal land. In the northern Oregon Coast Range north of Highway 20, tree voles are now considered uncommon and sparsely distributed compared to the rest of the range, based on observations of vole nests classified as recently occupied (USDA and USDI 2007, pp. 289, 294). Furthermore, the few nests that are recorded in this portion of the DPS likely result in overestimation of tree vole occupancy given errors in nest activity classification (USDA and USDI 2007, p. 290) and the difficulty in translating nest counts to vole numbers discussed earlier in this section.

Descriptions of historical search efforts for red and Sonoma tree voles indicate that once the species' behavior and life history were understood, searchers were more successful in finding tree voles, often with little difficulty. Observers typically noted the patchy distribution of voles, and once they found voles, they tended to readily find multiple nests and voles in the same area (Taylor 1915, pp. 140–141; Howell 1926, pp. 42–43; Clifton 1960, pp. 24–30; Maser 1966, pp. 170, 216–217; Maser 2009, pers. comm.; Forsman and Swingle 2010, p. 104). For example, Clifton (1960, pp. 24–30) averaged one day searching for every red tree vole "colony" found near Newberg, Oregon, and Howell described more than 50 Sonoma tree voles being collected over 2 days near Carlotta, California in 1913 (Howell 1926, p. 43).

In contrast, between 2002 and 2006, Forsman and Swingle (2006, unpublished data) spent 1,143 person-hours searching potential vole habitat in or near areas where voles historically occurred in or immediately adjacent to the DPS and captured or observed only 27 voles, equating to 42 hours of search effort per vole found. Although a rigorous quantitative comparison cannot be made between recent and historical observation data, the above anecdotal information indicates that tree vole numbers are greatly reduced in the DPS—red tree voles are now scarce in the same areas where they were once found with relative ease. Similarly, decreases in Sonoma tree vole numbers have been observed, although not quantified, over the past decade (Diller 2010, pers. comm.). The weight of evidence suggesting that tree voles are less abundant now increases upon considering that most historical observations were by naturalists who primarily collected voles from younger forests where nests were more easily observable and accessible by free-climbing (e.g. Howell 1926, p. 42; Clifton 1960, p. 34; Maser 2009, pers. comm.; Forsman 2010, pers. comm.). These early naturalists were limited in the size and form (e.g., presence or absence of low-lying limbs that allowed for free-climbing) of trees they could climb, unlike current researchers, yet found many voles with relatively little effort. In contrast, researchers in recent years searching these same areas have captured comparatively few voles per unit effort, using state-of-the-art climbing gear to access every potential nest observed, regardless of tree form or size (Forsman 2009, pers. comm.; Forsman and Swingle 2006, unpublished data; 2009, pers. comm.). Although rigorous population estimates cannot be determined from these data, the evidence suggests that red tree voles are now much less abundant within the DPS than they were historically.

Habitat loss appears to at least partly explain the apparent reduction in tree vole numbers, both rangewide and within the DPS. As an example, many researchers have noted a continual decrease in both habitat and numbers of Sonoma tree voles near Carlotta, California, from 1913 through 1977 (Howell 1926, p. 43; Benson and Borell 1931, p. 226; Zentner 1966, p. 45). Specific to the North Oregon Coast DPS, Forsman and Swingle (2009, pers. comm.) noted the reduction or loss of habitat in areas where tree voles historically occurred; habitat loss seemed especially prominent in coastal areas and along the Willamette Valley margin, where Forsman and Swingle (2009, unpublished data; 2009, pers. comm.) observed that some historical collecting sites had since been logged and found fewer voles than were historically collected from these areas. The apparently significant decline in tree vole abundance within the North Oregon Coast DPS of the red tree vole appears to correspond with the extensive historical loss of the older forest type that provides the highest quality habitat for the red tree vole, as well as the ongoing harvest of timber on short rotation schedules that maintains the remaining forest in lower quality early seral conditions in perpetuity. In

addition, continuing timber harvest in younger forest areas adjacent to remaining patches of older forest diminishes the habitat quality of these stands by maintaining them in an isolated and fragmented condition that may not allow for persistent populations of red tree voles.

Landscapes in the Oregon Coast Range have become increasingly fragmented and dominated by younger patches of forest, as old and mature forests have been converted to younger stands through anthropogenic alteration (Wimberly *et al.* 2000, p. 175; Martin and McComb 2002, p. 255; Wimberly 2002, p. 1322; Wimberly *et al.* 2004, p. 152; Wimberly and Ohmann 2004, pp. 631, 635, 642). The historical loss of large contiguous stands of older forest has manifested in the current primary threats to the North Oregon Coast DPS of the red tree vole of insufficient habitat, habitat fragmentation, and isolation of small populations; these threats are addressed under *Factor E*, below. Here we address the effects of varying levels of ongoing habitat loss and modification in the North Oregon Coast DPS of the red tree vole. We first provide some background on the historical environmental conditions in the DPS, as this provides important context for understanding the effects of ongoing timber harvest on the habitat of the red tree vole.

Modification of Oregon Coast Range Vegetation

Within the Oregon Coast Range Province, the amount of forests that have the type of structure and composition favored by red tree voles has experienced significant loss over the past century, primarily due to timber harvest. While the total area of closed canopy forest remained fairly stable from 1936 to 1996, major shifts have occurred in the distribution, age, and structure of these forested cover classes. Most germane to red tree voles, there has been a change from a landscape dominated by large conifers with quadratic mean tree diameters greater than or equal to 20 in (51 cm) to a landscape dominated by smaller conifers. Specifically, the percent cover of large conifers in the Coast Range Province declined from 42 percent in 1936 to 17 percent in 1996 (Wimberly and Ohmann 2004, p. 631). On Federal lands, timber harvest has declined substantially since the inception of the NWFP in 1994 (Spies *et al.* 2007a, p. 7). Moeur *et al.* (2005, pp. 95–100) even showed a 19 percent increase in older forests (minimum quadratic mean diameter 20 in (51 cm) and canopy cover greater than 10 percent, regardless of structural complexity) on Federal lands in the NWFP during the first 10 years of its implementation. However, more recently, better data and analysis methods have indicated that in fact there has been a slight net decline in older forest on Federal lands between 1994 and 2007. Specifically on Federal lands in the Oregon Coast Range, older forest has declined from 44.2 percent to 42.9 percent (Moeur *et al.* 2010a, Figure 1).

There is some indication that managed second-growth forests are not developing characteristics identical to natural late-successional forests, and that second-growth forests and clearcuts exhibit reduced diversity of native mammals typically associated with old-growth forest conditions (Lomolino and Perault 2000, pp. 1526, 1529). The historical losses of late-successional forest and ongoing management of most forests on State, County, and private lands for harvest on a short-rotation schedule have resulted in the destruction of the older forest habitats favored by red tree voles; these older forest habitats now persist largely in small, isolated fragments across the DPS. Because of the historical loss of older forest stands, the remaining habitat now contains forests in earlier seral stages, which provide lower-quality habitat for red tree voles. The ongoing management of much of the forest within the DPS for timber harvest on relatively short rotation schedules, particularly on State, County, and private lands, contributes to the ongoing modification of tree vole habitat by maintaining forests in low quality condition; most of the younger forest types within the DPS are avoided by tree voles for nesting. Although younger forests may provide important interim or dispersal habitats for red tree voles, it is unlikely that forests lacking the complexity and structural characteristics typical of older forests can support viable populations of red tree voles over the long term. These concepts are explored further in the section, Continuing Modification and Current Condition of Red Tree Vole Habitat, below.

Habitat Loss From Timber Harvest

In their analysis of forest trends, Wimberly and Ohmann (2004, p. 643) found that land ownership had the greatest influence on changes in forest structure between 1936 and 1996, with State and Federal ownership retaining more large-conifer structure than private lands. Loss of large-conifer stands to development was not considered a primary cause of forest type change. Instead, loss to disturbance, primarily timber harvest, was the biggest cause, with fires accounting for a small portion of the loss (Wimberly and Ohmann 2004, pp. 643–644). Between 1972 and 1995, timber clearcut harvest rates in all stand types were nearly three times higher on private land (1.7 percent of private land per year) than public land (0.6 percent of public land per year), with the Coast Range dominated by private industrial ownership and having the greatest amount of timber harvest as compared to the adjacent Klamath Mountain and Western Cascades Provinces (Cohen *et al.* 2002, pp. 122, 124, 128). Within the Coast Range, there has been a substantial shift in timber harvest from Federal to State and private lands since the 1980s, with an 80 to 90 percent reduction in timber harvest rates on Federal lands (Azuma *et al.* 2004, p. 1; Spies *et al.* 2007b, p. 50).

More than 75 percent of the future tree harvest is expected to come from private timberlands (Johnson *et al.* 2007, entire; Spies *et al.* 2007b, p. 50) and modeling of future timber harvests over the next 50 years indicates that current harvest levels on private lands in western Oregon can be maintained at that rate (Adams and Latta 2007, p. 13). Loss and modification of tree vole habitat within the northern Oregon Coast Range is thus expected to continue, albeit at a lower rate on State and Federal lands compared to private lands (see discussion under *Factor D*, below). However, even on Federal lands, which provide the majority of remaining suitable habitat for red tree voles within the DPS, some timber harvest is expected to continue in those land allocations where allowed under their management plans. Although some forms of harvest may not exert a significant negative impact on red tree voles if managed appropriately (for example, thinning in Late-Successional Reserves (LSRs) or Late-Successional Management Areas (LSMAs) with the goal of enhancing late-successional characteristics over the long term), lands in the Timber Management Area (TMA) and Matrix allocation are intended for multiple uses, including timber harvest. As an example, since the inception of the NWFP, 55 percent of the timber harvest on BLM lands within the DPS came from the Matrix allocation, 20 percent from Adaptive Management Areas (AMAs), and 25 percent came from LSRs both within and outside the AMA (BLM 2010, unpublished data). These numbers do not include harvest within Riparian Reserves, which overlay all land allocations. Within the DPS, approximately 156,844 ac (63,475 ha)

are in the Matrix and TMA allocations, combined.

Continuing Modification and Current Condition of Red Tree Vole Habitat

The loss of much of the older forest within the DPS has reduced high-quality habitat for tree voles to relatively small, isolated patches; these conditions pose a significant threat to red tree voles, which are especially vulnerable to the effects of isolation and fragmentation due to their life-history characteristics (see *Factor E*, below). Tree voles are naturally associated with unfragmented landscapes, and are considered habitat specialists that select areas of contiguous mature forest; they are not adapted to fragmented landscapes and early seral habitat patches (Martin and McComb 2002, p. 262). At present and for the foreseeable future, however, much of the remaining forest on State and private lands in the North Coast Range DPS is managed for timber production, as are lands within the Matrix and TMA allocations of the Federal lands (see *Factor D* below). Managing for timber production either removes existing habitat or prevents younger stands from developing into suitable habitat due to short harvest rotations. Remaining older forest habitat tends to be in small, isolated patches (see *Factor E* below); we consider such forest conditions to provide poor habitat for the red tree vole and unlikely to sustain the species over the long term. Although some State land and much of the Federal ownership is managed for development or maintenance of late-successional habitat or old-forest structure conditions, active management such as thinning activities are allowed and encouraged to develop the desired stand conditions. However, thinning stands occupied by tree voles can reduce vole numbers or eliminate them (see below).

The most comprehensive analysis of current red tree vole habitat conditions specific to the North Coast Range DPS is a report by Dunk (2009, entire). Dunk (2009, p. 1) applied a red tree vole habitat suitability model (Dunk and Hawley 2009, entire) to 388 Forest Inventory Analysis (FIA) plots systematically distributed on all ownerships throughout the DPS (the FIA is a program administered by the USDA Forest Service, and is a national scientific inventory system based on permanent plots designed to monitor the status, conditions, and trends of U.S. forests). FIA plots are resampled every 10 years to monitor changes in forest vegetation. The red tree vole habitat suitability model estimates the probability of red tree vole nest presence (Po) from 0 to 1; the larger values of Po (e.g., 0.9 or 0.8) represent a greater probability of nest presence and correlate to presumed higher quality habitat. Based on their model results, Dunk and Hawley (2009, p. 630) considered a Po of greater than or equal to 0.25 as likely having presence of a tree vole nest in an FIA plot; a Po of less than 0.25 was considered as not likely to have a tree vole nest. The Po cutoff point of 0.25 represents the value that achieved the highest correct classification of occupied and non-occupied sites while attempting to reduce the error of misclassifying plots that actually had nests as plots without nests; plots with Po greater than 0.25 are assumed to represent suitable tree vole habitat. Based on this assumption that a Po value of 0.25 represents suitable tree vole habitat, Dunk (2009, pp. 4, 7) found that 30 percent of the plots on Federal lands within the DPS had suitable habitat, but only 4 and 5 percent of the plots on private and State lands within the DPS, respectively, had suitable habitat. Across all landownerships in the DPS collectively, 11 percent of the plots had potentially suitable habitat for red tree voles. Thus within the DPS, there is relatively little suitable habitat remaining for the red tree vole, and this suitable habitat is largely restricted to Federal lands. State and private lands, which comprise the majority of the DPS (78 percent of the land area), provide little suitable habitat for tree voles.

Dunk and Hawley (2009, p. 631) also compared red tree vole usage of forest types with their proportional availability on the landscape; this is an important measure of habitat selection by the species. If red tree voles do not select for any particular forest type condition, we would expect usage of different forest types to be proportional to their availability. If a forest type is used less than expected based on its availability, that is assumed to represent selection against that forest type; in other words, the species avoids using that forest type, even though it is available. If a forest type is used more than expected based on availability, that is assumed to represent selection for that forest type; the species is seeking out that forest type, despite the fact that it is less readily available. The forest type that tree voles select is assumed to be suitable habitat.

Combining the strength of selection analysis done by Dunk and Hawley (2009, p. 631) with the current habitat condition in the DPS based on FIA data, almost 90 percent of the DPS is in a forest type condition that red tree voles tend to avoid, while only 0.3 percent of the DPS is in a forest type that red tree voles tend to strongly select for (Figure 3). This is based on evaluation of the FIA plots, comparing those with the lowest probability of selection by tree voles for nesting (lowest 20 percent of probability classes; nearly 87.3 percent of FIA plots across all landownerships within the DPS were in this condition) with those with the greatest strength of selection (highest 20 percent of probability classes; 0.3 percent of FIA plots across all landownerships were in this condition). Assuming that tree voles exhibit the strongest selection for the highest quality habitats, this translates into roughly 11,605 ac (4,700 ha) of high-quality habitat remaining for red tree voles distributed across a DPS roughly 3.8 million ac (1.6 million ha) in size. Furthermore, although some nests may have been missed during tree vole surveys, the nest estimates used by Dunk and Hawley (2009, entire), and subsequently applied by Dunk (2009, entire), likely overestimate probable tree vole occupancy for two reasons. First, occupied sites were based on locations of tree vole nests, and as explained earlier, the presence of nests, even those classified as "active," do not necessarily equate to tree vole occupancy. Second, the analyses were based on plot-level data at the scale of less than 2.5 ac (1 ha). The distribution of tree vole habitat and effects of habitat fragmentation, connectivity, and possible metapopulation dynamics may also influence the presence of tree voles on a site such that a 2.5 ac (1 ha) plot of highly suitable habitat isolated from other suitable habitat is less likely to contain or sustain tree voles than connected stands (Dunk 2009, p. 9). Thus, its actual likelihood of occupancy may be lower than predicted by the model due to its landscape context. The sample patch size used by Dunk (2009, entire) is less than the 5–10 acres (2–4 ha) in which Hopkins (2010, pers. comm.) found nests of tree voles and substantially less than the minimum forest stand size of 75 ac (30 ha) in which individual tree voles have been found (Huff *et al.* 1992, p. 7). Whether either of these minimum patch sizes can sustain a population of red tree voles over the long term is unknown and is influenced by such things as habitat quality within and surrounding the stand, position of the stand within the landscape, and the ability of individuals to move among stands (Huff *et al.* 1992, p. 7; Martin and McComb 2003, pp. 571–579). Given the conservative assumptions of the model, the amount of remaining likely suitable habitat within the DPS reported by Dunk (2009, entire) may represent a best-case

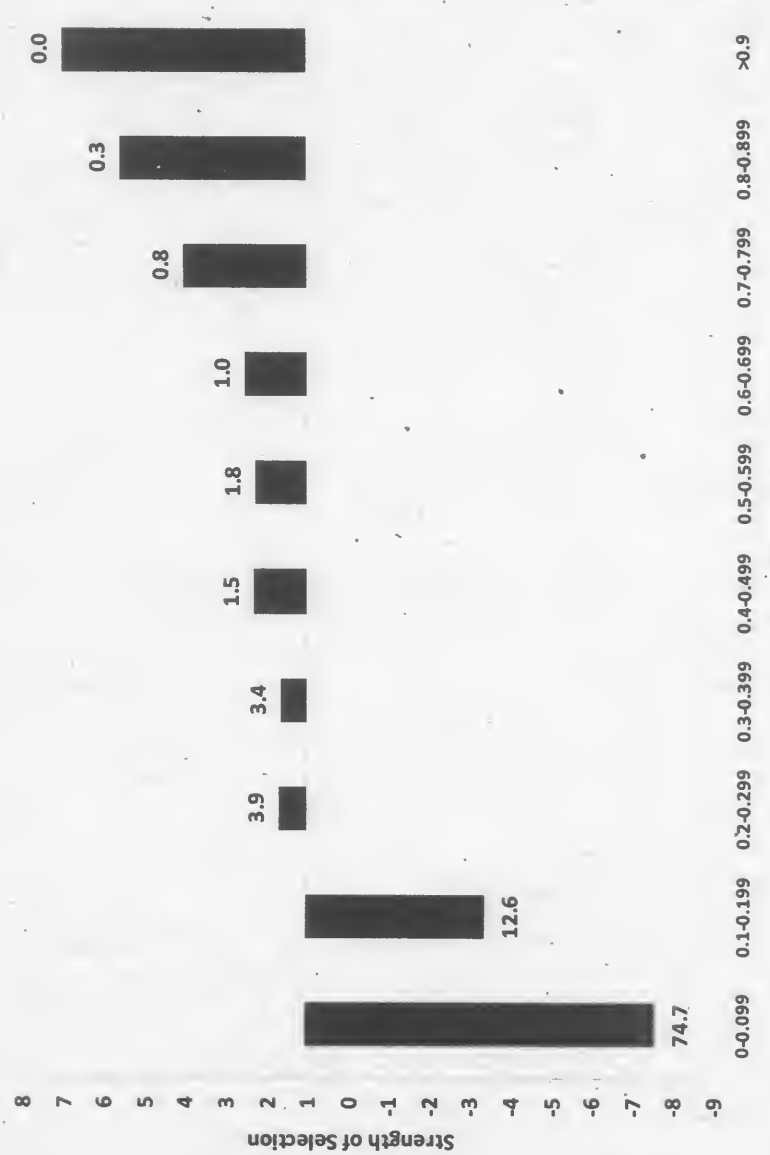

Figure 3. Strength of habitat selection by red tree voles on Federal land throughout their range in Oregon and percentage of FIA plots in DPS within each Probability Class. Probability Classes are the probability of occurrence of red tree vole nests in a plot with certain habitat characteristics, with probabilities divided into 10 equally sized groups. Bars represent the strength of selection by red tree voles for each Probability Class, with values less than 1 (below the line) indicating habitat avoidance and values greater than 1 (above the line) indicating habitat selection within a specific Probability Class. The gradient in strength of selection exhibited by red tree voles ranged from strongest selection for the highest Probability Classes (bars to the right of the graph) to strong selection against the lowest Probability Classes (bars to the left of the graph). The number at the end of each bar is the percentage of plots within the DPS within that Probability Class.

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Spies *et al.* (2007b, entire) modeled red tree vole habitat in the Coast Range Physiographic Province of Oregon (physiographic provinces are geographic divisions of areas of distinctive topography and geomorphic structure). scenario, and the amount of remaining habitat suitable for red tree voles is likely less than estimated here.

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Their results indicated that tree vole habitat currently makes up almost 50 percent of the province, with just under half of that habitat occurring on private lands (Spies *et al.* 2007a, p. 10, Figure 2). While this assessment of the current condition of tree vole habitat in coastal Oregon differs from Dunk (2009, entire), we believe Dunk to be a more accurate description of red tree vole habitat in the DPS and rely more heavily on that work for the following reasons. Dunk's analysis is specific to the DPS, whereas the Coast Range Physiographic Province, which includes the DPS, covers an additional 1.8 million acres (728,000 ha) extending to the south of the DPS. Second, Spies *et al.* (2007b, p. 51, Appendix D) assessed tree vole habitat by developing habitat capability index models that reflect habitat characteristics important for survival and reproduction based on literature and expert opinion. The variables they used were restricted to existing geographic information system layers that could be projected into the future using forest dynamics models. They were not able to empirically verify their red tree vole habitat capability index model with independent data, although it was reviewed by two published experts. Dunk's analysis (2009, entire) relied on the red tree vole habitat model described in Dunk and Hawley (2009, entire), which was empirically developed based on presence or absence of red tree vole nests in FIA plots on Federal lands throughout most of the tree vole range. Dunk (2009, entire) then applied that model to FIA plots across all ownerships within the DPS to describe current tree vole habitat distribution based on existing field data.

As noted earlier, although red tree voles are widely considered habitat specialists strongly associated with older forests, they may also be found in younger stands (Maser 1966, pp. 216–217; Thompson and Diller 2002, p. 95; Swingle and Forsman 2009, pp. 278, 284), which are much more abundant in the DPS. Although some have suggested that these young forests may be population sinks (Carey 1991, p. 34), the role of younger stands in tree vole population dynamics is unclear. Tree voles in young stands may represent attempts of emigrants to establish territories, or may be residual populations that tolerate habitat disturbance (USDA and USDI 2000a, p. 378). It is possible that some young stands are on unique microsites where tree voles are able to reinvade and persist in the developing stands (Forsman 2010, pers. comm.). Younger stands may also be important for allowing dispersal and short-term persistence in landscapes where older forests are either isolated in remnant patches or have been largely eliminated (Swingle 2005, p. 94). The presence of individuals within a particular habitat condition does not necessarily mean the habitat is optimal, and individuals may be driven into marginal habitat if it is all that is available (Gaston *et al.* 2002, p. 374). Swingle and Forsman (2009, entire) found radio-collared tree voles in young stands throughout the year, but occupancy of younger stands appears to be short-term or intermittent (USDA and USDI 2000a, p. 378; Diller 2010, pers. comm.; Hopkins 2010, pers. comm.).

There are few data on survival of tree voles in younger stands. The only study conducted to date suggested no difference in annual survival of tree voles in young (22–55 years) and old (110–260 years) stands, but the authors cautioned that their sample sizes were small and had low power to detect effects (Swingle 2005, p. 64; Forsman and Swingle 2009, pers. comm.). Thinning younger stands occupied by tree voles can reduce or eliminate voles from these stands (Biswell 2010, pers. comm.; Swingle 2010, pers. comm.), and Carey (1991, p. 8) suggests activities that result in rapidly developing (changing, unstable) younger forests are a limiting factor for red tree voles. Conversely, when vole nests classified as occupied (based on indication of activity such as presence of fresh green resin ducts) were protected with a 10-acre buffer zone during thinning treatments, Hopkins (2010, pers. comm.) continued to find signs of occupancy at these nests post-treatment, although signs of occupancy were intermittent through time. However, Hopkins' (2010, pers. comm.) results are subject to the limitations of using the presence or absence of green resin ducts to determine the activity status of nests (see the beginning of *Factor A*, above). Red tree voles may ultimately come back to a treated stand, but how long it will be after the treatment before the stand is reoccupied is unknown. If and when tree voles return likely depends on a multitude of factors including magnitude, intensity and frequency of the treatment within the stand, type and amount of structure left after treatment (e.g., large trees), and whether or not there is a refugium or source population nearby that is available to supply voles for recruitment when the treated stand becomes suitable again (Biswell 2010, pers. comm.; Forsman 2010, pers. comm.; Hopkins 2010, pers. comm.; Swingle 2010, pers. comm.). Thus, while the value of younger stands as suitable habitat to voles is unclear, they may provide some value in otherwise denuded landscapes, and thinning treatments in these stands have the potential to further reduce vole numbers, especially if thinning design does not account for structural features and the connectivity of those features that are important to red tree voles (Swingle and Forsman 2009, p. 284). Swingle (2005, pp. 78, 94), however, cautions against using the occasional presence of tree voles in young forests to refute the importance of old forest habitats to tree voles.

In summary, whether red tree voles in younger forests can persist over long periods or are ephemeral populations that contribute little to overall long-term population viability remains unknown at this time (USDA and USDI 2007, p. 291). However, the recent work of Dunk (2009, entire) and Dunk and Hawley (2009, entire) indicate that red tree voles display strong selection for forests with late-successional structural characteristics.

Although the role of younger forest is uncertain, based on our evaluation of the best available scientific data, as described above, we conclude that older forests are necessary habitat for red tree voles and that younger stands will rarely substitute as habitat in the complete or near absence of older stands. While some State land and much of the Federal ownership is managed for development or maintenance of late-successional habitat or old-forest structure conditions, full development of this habitat has yet to occur (see below). In addition, thinning activities designed to achieve these objectives can reduce or eliminate tree voles from these stands. The ongoing management of forests in most of the North Oregon Coast DPS for the purposes of timber production thus contributes to the threat of habitat modification for the red tree vole, as forest habitats are prevented from attaining the high-quality older forest characteristics naturally selected by red tree voles and are maintained in a low-quality condition for red tree voles in the DPS. Our evaluation of the remaining older forest patches within the DPS indicate they are likely insufficient to sustain red tree voles over the long term due to their relatively small size and isolated nature (see *Factor E*, below).

Projected Trends in Red Tree Vole Habitat

Implementing current land management policies in the Coast Range Province is projected to provide an increase (approximately 20 percent) in

red tree vole habitat over the next 100 years, primarily on Federal and State lands (Spies *et al.* 2007b, p. 53). Vegetation simulations indicate that private industrial timber lands will generally be dominated by open and small- and medium-sized conifer forests. Old forest structure and habitat will strongly increase on Federal and State lands, and large, continuous blocks of forest will increase primarily on Forest Service and State lands (Johnson *et al.* 2007, pp. 41–42). The estimate of older forests on State lands, however, may be a substantial overestimate because the analysis was not able to fully incorporate the complexity of the State forest management plan (Johnson *et al.* 2007, p. 43; Spies *et al.* 2007a, p. 11). In addition, the Oregon Department of Forestry (ODF) has since reduced the targeted level of old forest to be developed in northwestern Oregon forests (ODF 2001, p. 4–48; 2010c, p. 4–48). Yet even with the projected increase, the amounts of old forest will not approach historical levels estimated to have occurred over the last 1,000 years in the Coast Range Province (Spies *et al.* 2007a, pp. 10–11), and these blocks of restored older forest will continue to be separated by forests in earlier seral stages on private lands. Although restoration of Oregon Coast Range forests to historical levels of older forest conditions is not requisite for the conservation of red tree voles, we have no evidence to suggest the present dearth of suitable habitat for the red tree vole will be alleviated by the modest projected increases in older forest conditions on Federal and State lands within the DPS. Even though the amount of suitable habitat on public lands may eventually increase, these patches of suitable habitat will remain fragmented due to landownership patterns and associated differences in management within the DPS. Furthermore, the time required for stand development to achieve these improved conditions, 100 years, is substantial; whether these gradual changes will occur in time to benefit the red tree vole in the North Oregon Coast DPS is unknown. However, we anticipate that any patches of suitable habitat that may be found on public lands within the DPS 100 years from now will continue to be fragmented and isolated, due to the management practices on intervening private lands that inhibit connectivity. Thus, although projected future conditions represent a potential improvement in suitable habitat for the red tree vole, the time lag in achieving these conditions and the fragmented nature of public lands in the northern Oregon Coast Range suggests that a potential gain of 20 percent more suitable habitat 100 years from now is likely not sufficient to offset the loss, modification, and fragmentation of habitat and isolation of populations that collectively pose an immediate threat to the red tree vole in the DPS.

Loss of forest land to development is projected to occur in 10 percent of the Coast Range Province, and would most likely occur on non-industrial private lands, near large metropolitan areas, and along the Willamette Valley margin (Johnson *et al.* 2007, p. 41; Spies *et al.* 2007a, p. 11). Although timber production in the Coast Range has shifted by ownership class, declining on Federal lands and increasing on private lands, overall production is projected to stay at recent harvest levels. Actual production may result in levels higher than projected because harvest levels estimated for private industrial timberland were conservative (Johnson *et al.* 2007, pp. 42–43) and timber production on State lands may be underestimated by 20 to 50 percent (Johnson *et al.* 2007, p. 43). Johnson *et al.* (2007, pp. 45–46) described several key uncertainties that were not accounted for in their projections of future trends in the Coast Range that could potentially affect their results. These uncertainties include: effects of climate change; recently adopted initiatives that may result in an increased loss of forest land to cities, towns, and small developments; a possible decrease in global competitiveness of the Coast Range forest industry; sales of industrial forests to Timber Management Investment Organizations that may result in a shift of land use to other types of development; the effects of Swiss needle cast on the future of plantation forestry; and effects of wildfire. Most of these scenarios would result in a loss of existing or potential tree vole habitat, contributing further to the present loss, modification, fragmentation, and isolation of habitat for the red tree vole within the DPS, although the magnitude of that loss is uncertain. In conclusion, while modest increases in tree vole habitat are expected to occur in the Oregon Coast Range over the next century, they are limited primarily to Federal lands and, to some lesser degree, State lands, although the amount of older forests on State lands may be an overestimate. As described above, the time lag in achieving this potential increase in suitable habitat and the fragmented nature of public lands, especially those Federal lands with the highest quality habitats, suggests that any future gains are likely not sufficient to offset the present threat of habitat loss, modification, or fragmentation, and its ongoing contribution to the isolation of red tree voles in the DPS.

Summary of Factor A

The North Oregon Coast DPS of the red tree vole is threatened by the effects of both past and current habitat loss, including ongoing habitat modification that results in the maintenance of poor quality forest habitats and insufficient older forest habitats, addressed here, and habitat fragmentation and isolation of small populations, addressed under *Factor E*. Most of the DPS, nearly 80 percent, is in State, County, and private ownership, and most of the forested areas are managed for timber production. Ongoing timber harvest on a short rotation schedule over most of this area maintains these forest habitats in a low-quality condition, preventing these younger stands from developing the older forest conditions most suitable for red tree voles. Although the role of younger forest stands is not entirely clear, we conclude the preponderance of the best available information suggests that red tree voles are habitat specialists strongly associated with unfragmented forests that exhibit late-successional characteristics; while younger forests may play an important role as interim or dispersal habitat, older forests are required to maintain viable populations of red tree voles over the long term. The ongoing management of forests in the North Oregon Coast DPS for the purposes of timber harvest thus contributes to the threat of habitat modification for the red tree vole, as forest habitats are prevented from attaining the high-quality older forest characteristics naturally selected by red tree voles and are maintained in a low-quality condition for red tree voles in the DPS.

Factors that hinder the development and maturation of younger forest stages into late-successional forest conditions contribute to the ongoing modification of suitable habitat and maintain the present condition of insufficient remaining older forest habitat for the red tree vole in the DPS. The persistence and development of high-quality tree vole habitat over the next century under existing management policies is likely to occur primarily on Federal lands, and to a lesser degree on State lands. However, as Federal lands make up less than a quarter of the area of the DPS, even with eventually improved conditions, suitable red tree vole habitat will remain restricted in size and in a

fragmented, isolated condition for the foreseeable future. In the interim, thinning activities designed to accelerate the development of late-successional forest structure conducive to tree vole habitat may reduce or eliminate local populations for an undetermined amount of time.

Declines in the amount of older forest within the Coast Range Province are unprecedented in recent history (Wimberly *et al.* 2000, pp. 176–178). This decline has translated into substantial habitat loss for red tree voles, with only 11 percent (approximately 425,000 ac (173,000 ha)) of the nearly 4 million acres (1.6 million ha) within the DPS boundary assumed to be potentially suitable habitat (Dunk 2009, p. 5). Most of this suitable habitat is restricted to Federal lands that lie in two discontinuous clusters within the DPS. State and private lands, which collectively comprise nearly 80 percent of the DPS area, provide very little suitable habitat; roughly 4 to 5 percent of the State and private lands are considered potentially suitable habitat for red tree voles (Dunk 2009, pp. 6–7).

Nearly 90 percent of the DPS is currently in a habitat condition avoided by red tree voles, and only 0.3 percent of the DPS is in a condition for which red tree voles show strong selection for nesting (Dunk 2009, p. 7). Given that nest presence does not correspond exactly with vole presence, and that the FIA sampling design may include habitat that is unavailable to tree voles, this is likely an overestimate of potential red tree vole habitat. Although Federal lands offer some protection and management of red tree vole habitat, indications are that there may not be enough habitat in suitable condition to support red tree voles north of U.S. Highway 20. In this area of the DPS Federal land is limited, connectivity between blocks of Federal land is restricted, and there are few known vole sites currently available to potentially recolonize habitat as it matures into suitable condition. Surrounding private timber lands are not expected to provide long-term tree vole habitat over the next century, and projections of suitable tree vole habitat on State land may be overestimates.

Conclusion for Factor A

Recent surveys at locations within the DPS where voles were readily captured 30 to 40 years ago have resulted in significantly fewer voles captured per unit of survey effort compared to historical collections. This suggests that tree vole numbers have declined in many areas where voles were once readily obtained by early collectors such as Alex Walker, Murray Johnson, Doug Bake, Chris Maser, and Percy Clifton (Forsman 2009, pers. comm.). Although standardized quantitative data are not available to rigorously assess population trends of red tree voles, we believe it is reasonable to conclude that, based on information from retrospective surveys of historical vole collection sites, red tree voles have declined in the DPS and no longer occur, or are now scarce, in areas where they were once relatively abundant. Loss of habitat in the DPS, primarily due to timber harvest, has been substantial and has probably been a significant contributor to the apparent decline in tree vole numbers. Current management practices for timber production, particularly on the State, and privately-owned lands that comprise the vast majority of the DPS, keep the majority of the remaining forest habitat from maturing and developing the late-successional characteristics that comprise highly suitable habitat for red tree voles. Current management for timber harvest thereby contributes to the ongoing modification of tree vole habitat, as well as the fragmented and isolated condition of the remaining limited older forest habitat for the species. Indications are that the remaining older forest patches are likely too small and isolated to maintain red tree voles over the long term (see *Factor E*, below). The biology and life history of red tree voles render the species especially vulnerable to habitat fragmentation, isolation, and chance environmental disturbances such as large-scale fires that could reasonably be expected to occur within the DPS within the foreseeable future (Martin and McComb 2003, p. 583; also addressed in *Factor E*). Based on our evaluation of present and likely future habitat conditions, we conclude that the ongoing effects of the destruction, modification, and curtailment of its habitat, in conjunction with other factors described in this finding, pose a significant threat to the persistence of the North Oregon Coast DPS of the red tree vole.

We have evaluated the best available scientific and commercial data on the present or threatened destruction, modification, or curtailment of the habitat or range of the North Oregon Coast DPS of the red tree vole, and determined that this factor poses a significant threat to the continued existence of the North Oregon Coast DPS of the red tree vole, when we consider this factor in concert with the other factors impacting the DPS.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

We are not aware of any information that indicates that overutilization for commercial, recreational, scientific, or educational purposes threatens the continued existence of the North Oregon Coast DPS of the red tree vole and have determined that this factor does not pose a significant threat to the viability of the North Oregon Coast DPS of the red tree vole.

Factor C. Disease or Predation

We are not aware of any information that indicates that disease threatens the North Oregon Coast DPS of the red tree vole, now or in the foreseeable future. With respect to predation, the red tree vole is prey for a variety of mammals and birds (see above under *Mortality*), although voles persist in many areas despite the large numbers of predators (Forsman *et al.* 2004, p. 300). However, barred owls have recently expanded into the Pacific Northwest and are a relatively new predator of red tree voles. Although a recent pellet study indicates that barred owls occasionally prey on tree voles (Wiens 2010, pers. comm.), the long-term effects of this new predator are uncertain. Barred owls have a more diverse diet than northern spotted owls, an established tree vole predator (Courtney *et al.* 2004, p. 7–40). While the varied diet of the barred owl may potentially limit their pressure as predators on tree voles, the fact that they outnumber spotted owls in the southern portion of the DPS by a 4:1 ratio (Wiens 2010, pers. comm.) may increase that pressure. Whether predation on red tree voles may significantly increase as a result of growing numbers of barred owls is unknown. Therefore, we cannot draw any conclusions as to the impact of barred owl predation on red tree voles in the DPS at this time.

Conclusion for Factor C

While predators undoubtedly have some effect on annual fluctuations in tree vole numbers, there is no evidence to suggest that changes in predation rates have caused or will cause long-term declines in tree vole numbers. Tree voles are exposed to a variety of predators and as a prey species they have adapted traits that reduce their exposure and vulnerability to predation; examples include cryptic coloration and leaping from trees when pursued (Maser *et al.* 1981, p. 204), or minimizing the duration of individual foraging bouts outside of the nest (Forsman *et al.* 2009a, p. 269). While habitat alterations

may affect the exposure and vulnerability of tree voles to predators (see above under *Mortality*), predators themselves do not appear to be a principal threat affecting long-term trends in red tree vole numbers. We therefore conclude that the continued existence of the red tree vole in the North Oregon Coast DPS is not threatened by disease or predation, nor is likely to become so.

We have evaluated the best available scientific and commercial data on the effects of disease or predation on the North Oregon Coast DPS of the red tree vole, and determined that this factor does not pose a significant threat to the viability of the North Oregon Coast DPS of the red tree vole.

Factor D. Inadequacy of Existing Regulatory Mechanisms

Timber harvest has been identified as the primary cause of vegetation change and loss of red tree vole habitat in the Oregon Coast Range Province (Wimberly and Ohmann 2004, pp. 643–644) (see *Factor A* discussion, above). Although most of the losses of late-successional forest conditions occurred historically, these losses, combined with current management of younger forests on both private and public lands, contribute to the ongoing modification, curtailment, fragmentation, and isolation of habitat for the red tree vole in the DPS. The inadequacy of existing regulatory mechanisms in regard to timber harvest contributes to these threats. Regulations for timber harvest differ among land ownerships and are explained in separate sections below.

Regulatory Mechanisms on Private Land

Private lands make up 62 percent of the DPS, and over 75 percent of timber harvest in the Coast Range Province is expected to come from private forest lands (Johnson *et al.* 2007, entire; Spies *et al.* 2007b, p. 50). The Oregon Forest Practice Administrative Rules and Forest Practices Act (OAR) (Oregon Department of Forestry 2010a, entire) apply on all private and State-owned lands in Oregon, regulating activities that are part of the commercial growing and harvesting of trees, including timber harvesting, road construction and maintenance, slash treatment, reforestation, and pesticide and fertilizer use. The OAR provide additional guidelines intended for protection of soils, water, fish and wildlife habitat, and specific wildlife species while engaging in tree growing and harvesting activities. The red tree vole is not one of the specific species provided for in the OAR, and we are not aware of any proactive management for tree voles on private timberlands in Oregon.

Per the Oregon Revised Statute, an average of two snags or green trees per ac (0.8 per ha) greater than 30 ft (9 m) tall and 11 in (28 cm) diameter are required to be left in harvest units greater than 25 ac (10 ha) (ORS 527.676); up to half of these trees may be hardwoods. Retention buffers are required around northern spotted owl nest sites (70 ac (28 ha) of suitable habitat) (OAR 629–665–0210), bald eagle nest sites (330-ft (100-m) buffer) (OAR 629–665–0220,), bald eagle roost sites (300-ft (100-m) buffer) (OAR 629–665–0230), and great blue heron nest sites (300-ft (91-m) buffer) (OAR 629–665–0120). In addition, foraging trees used by bald eagles (OAR 629–665–0240) and osprey nest trees and associated key nest site trees (OAR 629–665–0110) are also protected from timber harvest. In all cases, protections of these sites are lifted when the site is no longer considered active (OAR 629–665–0010).

Within the Coast Range, small perennial streams that are neither fish bearing nor a domestic water source have no tree retention requirements. With respect to all other perennial streams, no harvest is allowed within 20 ft (6 m). In addition, riparian management areas are established around all fish-bearing streams and large or medium non-fish-bearing streams; their distances range from 20 to 100 ft (6 to 30 m) beyond the stream, depending on the stream size and fish-bearing status. Within these riparian management areas, from 40 to 300 square ft (4 to 28 square m) of basal area must be retained for every 1,000 ft (305 m) of stream; basal area retention levels depend on stream size, fish presence, and type of harvest (OAR 629–640–0100 through 629–640–0400). Trees within the no-harvest 20-ft (6-m) buffer count towards these retention requirements. To meet the basal area requirement within the riparian management areas of large and medium streams, a minimum number of live conifers must be retained to meet shade requirements. Depending on stream size and fish-bearing status, live conifer retention requirements range from 10 to 40 per 1,000 ft (305 m) of stream, with a minimum size of either 8 or 11 in (20 or 28 cm) dbh. If the basal area requirements are still not met with the minimum conifer retention, the remainder can be met with trees greater than 6 in (15 cm); a portion of this retention can be met with snags and hardwoods (excluding red alder (*Alnus rubra*)). For all streams where the pre-harvest basal area of the riparian area is less than the targeted retention level, timber harvest may still occur (section 6 of OAR 629–640–0100 and section 7 of OAR 629–640–0200). In addition, basal area credits may be granted, upon approval, for other stream enhancements, such as placing downed logs in streams to enhance large woody debris conditions (OAR 629–640–0110). Thus, while basal area credits may produce in-stream enhancements, they simultaneously reduce potential arboreal habitat for red tree voles.

Given the extensive network of streams within the Coast Range, riparian management areas appear to have potential in providing connectivity habitat for red tree voles between large patches of remnant older forest stands. However, given the minimum tree retention sizes and numbers prescribed under the OAR, we believe them to be insufficient to provide adequate habitat to sustain populations of red tree voles, and likely not sufficient to provide connectivity between large patches of remnant older forest stands. As an example, the streamside rules applying the most protection apply around fish-bearing streams (sections 5–7 of OAR 629–640–100). Although these sections require retention of 40 live conifer trees per 1,000 ft (305 m) along large streams, and 30 live conifer trees along medium streams, these trees need only be 11 in (28 cm) dbh for larger streams and 8 in (20 cm) dbh for medium streams to count toward these requirements. Although these regulatory requirements are stated as minimums, they potentially allow for conditions such that the remaining trees will likely be far smaller than those generally utilized by red tree voles, and the remaining trees may be relatively widely dispersed along the riparian corridor, thereby impeding arboreal movement. Furthermore, the purpose of tree retention in riparian management areas is to retain stream shade, and retaining a minimum number of live conifers is designed to distribute that shade along the stream reach by retaining more, smaller trees to meet the basal area requirements rather than concentrate the targeted basal area into a few large trees. Consequently, there is little incentive to retain any larger trees within the riparian management areas.

Although in general biological corridors are believed to be beneficial for the conservation of fragmented populations by allowing for genetic interchange and potential recolonization (e.g., Bennett 1990, entire; Fahrig and Merriam 1994, p. 51; Rosenberg *et al.* 1997, p. 677), possible disadvantages may include potential increases in predation, parasitism, and invasion of interior habitats by introduced species

(e.g., Wilcove *et al.* 1986, pp. 249–250; Simberloff and Cox 1987, pp. 66–67; Yahner 1988, p. 337; Simberloff *et al.* 1992, p. 498). Long, narrow strips of habitat suffer from a high ratio of edge to interior, resulting in "edge effects" such as altered microclimates and potentially increased vulnerability to generalist predators (Yahner 1988, p. 337; Saunders *et al.* 1991, pp. 20–22; Chen *et al.* 1993, p. 220). In old-growth Douglas-fir forests, altered environmental conditions may extend up to 137 m (450 ft) from the forest edge, to the extent that patches less than 10 ha (25 ac) in size provide essentially no forest interior habitat (Chen *et al.* 1992, p. 395).

The successful use of corridors to maintain regional populations is highly species-specific (Rosenberg *et al.* 1997, p. 683; Debinski and Holt 2000, p. 351), and depends on the spatial configuration of the remaining habitat, the quality of the corridor habitat, and the habitat specificity and dispersal ability of the species in question (Henein and Merriam 1990, p. 157; Fahrig and Merriam 1994, p. 53; With and Crist 1995, entire; Rosenberg *et al.* 1997, entire). In general, habitat specialists with limited dispersal capabilities, such as the red tree vole, have a lower "critical threshold" for responding to fragmented habitats; such species may experience the environment as functionally disconnected even when their preferred habitat still comprises nearly half of the landscape (With and Crist 1995, p. 2452; Pardini *et al.* 2010, p. 6). Reduced survival probability for animals moving through linear corridors of habitat may potentially be offset by large numbers of dispersers, but for animals with relatively low reproductive rates and low mobility, such as the red tree vole, survival probability may be compromised under such conditions (Martin and McComb 2003, p. 578). Poor-quality habitat conditions for red tree voles in riparian management areas, such as from reduced canopy cover, may reduce their probability of survival in moving through such a patch (Martin and McComb 2003, p. 577). For example, there is some evidence that small mammals may experience increased risk and local extinction events of predation in narrow corridors or isolated fragments of habitat (e.g., Henderson *et al.* 1985, p. 103; Mahan and Yahner 1999, pp. 1995–1996). Although riparian buffers are frequently suggested as potential corridors for dispersal, Soulé and Simberloff (1986, pp. 33–34) specifically suggest that forest interior species such as the red tree vole would likely avoid using such areas for movement between remaining patches of conifer forest. Observations that red tree voles are now apparently absent from forest stands where they historically occurred indicate riparian management areas are likely not functioning as successful corridors for dispersal and recolonization by red tree voles in the DPS.

Although the OAR do not specifically provide protection for red tree voles, some protections may be afforded to individuals that are incidentally found within buffers retained for sensitive wildlife sites. However, such scattered remnants of possible habitat are unlikely to protect viable populations due to their small size and fragmented and isolated nature. In addition, these protected areas can be logged if the site is no longer occupied by the target species. The short timber harvest rotations (e.g., in calculating its riparian rule standards, OAR assume 50-year rotations for even-aged stands, and 25-year entry intervals for uneven-aged management) in the surrounding landscape further limits the potential for a well-connected tree vole population. Although tree voles have been found in these younger stands, frequent thinnings, larger harvest units, and the tendency for these large harvest units to aggregate into larger blocks of younger stands that are unlikely to develop into red tree vole habitat (Cohen *et al.* 2002, p. 131) decrease the likelihood that tree voles will persist on industrial private timber lands even with protections afforded to other species per the OAR. Therefore, based on the above assessment, we conclude that existing regulatory mechanisms on private land are inadequate to ameliorate the threat of habitat loss and fragmentation and provide for the conservation of the North Oregon Coast DPS of the red tree vole.

Summary of Regulatory Mechanisms on Private Land

Private lands comprise more than 60 percent of the DPS, and most of the projected future timber harvest in the Oregon Coast Range is anticipated to come from these lands. The Oregon Forest Practices Administrative Rules and Forest Practices Act (OAR) provide the current regulatory mechanism for timber harvest on private lands within the DPS. The stated goal of the OAR is to provide for commercial growing and harvesting of trees. The OAR additionally provide guidelines intended to protect soils, water, and fish and wildlife habitat, including protection of specific wildlife species, during the course of these activities. The red tree vole is not one of the specific species protected by the OAR, and due to its relatively specialized habitat requirements and limited dispersal capability, provisions intended to conserve habitat for other wildlife species are likely inadequate to provide for the conservation of the red tree vole. Despite the incidental benefits provided by protective measures for aquatic resources and other wildlife, management under this regulatory mechanism results in much of the habitat for the red tree vole being continually modified such that insufficient high-quality habitat (well-connected stands with older forest characteristics) is maintained, and remnant older forest patches remain fragmented and isolated due to intensive management in the surrounding landscape. We therefore conclude that existing regulatory mechanisms on private land are inadequate to provide for the conservation of the North Oregon Coast DPS of the red tree vole, as they contribute to threats of habitat destruction, modification, or curtailment under Factor A, as well as the threats of habitat fragmentation and isolation of small populations under Factor E.

Regulatory Mechanisms on State Land

State lands make up 16 percent of the DPS, totaling just over 600,000 ac (242,800 ha). Although there are some scattered State parks located primarily along the coastal headlands, virtually all of the State ownership in the DPS is land managed by the Oregon Department of Forestry (ODF) in the Tillamook and Clatsop State Forests, as well as other scattered parcels of State forest land in the southern half of the DPS. State forest lands are to be actively managed, assuring a sustainable timber supply and revenue to the State, counties, and local taxing districts (ODF 2010c, pp. 3–2, 3–4 to 3–5). Annual timber harvests projected over the next decade for each of the three State Forest districts within the DPS sum to 181 million board feet (422,000 cubic m) (ODF 2009, p. 59; 2011a, p. 69; 2011b, p. 65). Harvest intensities (annual harvest per acre of landbase) differ by district; harvest intensity for the Tillamook District, which comprises half of the State Forest ownership within the DPS, is projected at 188 board feet per acre (0.526 and 0.530 cubic m per ha) per year. The Astoria and Forest Grove Districts project substantially higher harvest intensities of 526 and 530 board feet per acre per year, respectively. Acreages used to calculate harvest intensity may include

acres that are not capable of producing forest and may be a slight underestimate.

The overarching statutory goal for management of State forest lands is to provide, "healthy, productive, and sustainable forest ecosystems that over time and across the landscape provide a full range of social, economic, and environmental benefits to the people of Oregon" (ODF 2010c, p. 3–12). Common School Forest Lands comprise 3 percent of the northwestern Oregon State Forests, and they are to be managed to maximize income to the Common School Fund (ODF 2010c, p. 3–2). To the extent that it is compatible with these statute-based goals, wildlife resources are to be managed in a regional context, providing habitats that contribute to maintaining or enhancing native wildlife populations at self-sustaining levels (ODF 2010c, pp. 3–12, 3–14).

The Northwestern Oregon State Forest Management Plan provides management direction for the State Forests within the DPS (ODF 2010c, p. 1–3). There is no specific direction in the ODF northwestern forest management plan recommending or requiring surveys or protecting tree vole sites if they are found on State lands. ODF personnel are recording tree vole nest locations as ancillary information collected during climbing inspections of marbled murrelet (*Brachyramphus marmoratus*) nests (Gostin 2009, pers. comm.), but are not implementing management or conservation measures to known sites beyond recording the nests.

Red tree voles are, however, one of several species of concern identified by ODF for which anchor habitats have been established (ODF 2010c, pp. 4–82 to 4–83, E–42). Anchor habitats are, "intended to provide locales where populations will receive a higher level of protection in the short-term until additional suitable habitat is created across the landscape" (ODF 2010c, p. 4–82). They are not intended to be permanent reserves. Terrestrial anchor habitats are intended to benefit species associated with older forest and interior habitat conditions, and management within them will promote the development of complex forest structure (ODF 2010c, pp. 4–82 to 4–83). Within the State Forests in the DPS, there are 11 terrestrial anchor habitat areas totaling 40,706 ac (16,474 ha) with a mean size of 3,701 ac (1,498 ha) (ODF 2011, unpublished data).

Although the OAR apply on all State lands, the ODF may develop additional site-specific management regulations that are potentially more stringent than those set forth in the OAR. With respect to management around marbled murrelet and northern spotted owl sites, ODF exceeds the protections called for by the OAR. Spotted owl sites are protected by a 250-acre (101-ha) core area around the nest, maintenance of 500 acres of suitable habitat within 0.7 mi (1.1 km) of the nest, and 40 percent of habitat within 1.5 mi (2.4 km) of the nest (ODF 2008, 2010b). Currently there are three owl sites on ODF State Forests within the DPS, and another six in adjacent lands wherein buffers from these sites overlap onto ODF ownership (ODF 2011, unpublished data). Marbled murrelet management areas (MMMA) are established around marbled murrelet occupied sites (ODF 2010d) with the purpose of retaining habitat function. There are 42 MMMAs within the DPS totaling 6,281 acres (2,542 ha), averaging 150 acres (61 ha), and ranging in size from 13 to 623 acres (5 to 252 ha) (ODF 2011, unpublished data). Sixteen percent of the MMMA acres occur within terrestrial anchor areas. ODF also applies the OAR protection buffers for bald eagle nests and roosts, and great blue heron nests (see Regulatory Mechanisms on Private Land above).

ODF regulations for fish-bearing streams provide a 170-ft (52 m) buffer on each side, with no harvest within 25 ft (7.6 m), management for mature forest (basal area of 220 square ft (20 square m) of trees greater than 11 in (28 cm) dbh) between 25 and 100 ft (7.6 and 30 m) of the stream, and retention of 10 to 45 conifers and snags per acre (4 to 18 per ha) between 100 and 170 ft (30 and 52 m) of the stream (ODF 2010c, p. J–7). Large and medium streams that are not fish-bearing have management standards similar to fish-bearing streams except that conifer and snag retention levels between 100 and 170 ft (30 to 52 m) from the stream are reduced to 10 per ac (4 per ha) (ODF 2010c, p. J–8). Management standards for small, perennial, non-fish-bearing streams, as well as intermittent streams considered "high energy reaches" (ODF 2010c, pp. J–9—J–10), apply to at least 75 percent of the stream reach and include no harvest within 25 ft (7.6 m), retain 15 to 25 conifer trees and snags per acre (6 to 10 per ha) between 25 to 100 ft (7.6 to 30 m) of the stream, and retain 0 to 10 conifer trees and snags per acre (0 to 4 per ha) between 100 to 170 ft (30 to 52 m). Additional management standards also apply within 100 ft (30 m) of intermittent streams (ODF 2010c, p. J–10). Within harvest units, all snags are to be retained, and green tree retention must average 5 per ac (2 per ha) (ODF 2010c, pp. 4–53 to 4–54). Although riparian retention levels on ODF lands are larger than what is required on private lands, they still allow for a reduction in existing habitat suitability for red tree voles, with minimum retention levels not meeting tree vole habitat requirements due to reduced stand densities and lack of crown continuity.

State forests are managed for specific amounts of forest structural stages. The objective is to develop 15 to 25 percent of the landscape into older forest structure (32 in (81 cm) minimum diameter trees; multiple canopy layers, diverse structural features, and diverse understory) and 15 to 25 percent into layered structure (two canopy layers, diverse multi-species shrub layering, and greater than 18 in (46 cm) diameter trees mixed with younger trees) over the long term (ODF 2010c, p. 4–48). Attainment of these objectives would benefit the red tree vole; however, this is not the current condition of State forests within the DPS, and these desired future conditions are not projected to be reached for at least 70 years (ODF 2010c, p I–13). At present, only about 1 percent of the State forests in northwestern Oregon is currently in older forest structure and 12 percent is in a layered structure condition (ODF 2003a, pp. 4, 12; ODF 2003b, pp. 4, 16; ODF 2009, pp. 4, 21; ODF 2011a, pp. 6, 20, 23; ODF 2011b, pp. 6, 25). While 13 percent of the State forests is in a complex structure category (old forest and layered forest structure, combined), only a small subset of this likely provides tree vole habitat given that only 5 percent of the State land is considered actual red tree vole habitat (Dunk 2009, pp. 5, 7).

Given the description provided (ODF 2010c, p. 4–48), we estimate the older forest structure condition as defined by the ODF would generally provide red tree vole habitat. However, only some portion of the layered structure condition appears to be suitable tree vole habitat, and that is likely to be stands with more complexity that are closer in condition to that found in stands classed as old forest structure. Thus, stands that currently meet tree vole habitat requirements on State lands are limited to 5 percent of the ownership and, given such a low proportion, most likely isolated. Furthermore, the direction is to actively manage these landscapes to meet the targeted forest structure stages via thinning activities that promote desired structural features. The use of thinning activities to create stands that may be suitable habitat for red tree voles has not been tested; to the extent we can develop the appropriate structure and conditions in the long term, such

treatments in the surrounding landscape over the short term likely further limits the potential for a well-connected tree vole population in the interim. Meanwhile, tree voles would have to persist in these small patches of suitable habitat for decades before more suitable habitat developed.

The effects of thinning treatments on red tree voles is not well understood. Younger stands may be important for allowing dispersal and short-term persistence of tree voles in landscapes where older forests are either isolated in remnant patches or have been largely eliminated (Swingle 2005, p. 94). Thinning these younger stands, while designed to develop late-successional habitat characteristics in the long term, has the potential to degrade or remove tree vole habitat in the short term, especially if thinning design does not account for structural features and the connectivity of those features that are important to red tree voles (Swingle and Forsman 2009, p. 284). As reported in USDA and USDI (2002, p. 13), although old, inactive red tree vole nests have been found in thinned stands and shelterwood treatments, no occupied nests have been found, suggesting that red tree voles are susceptible to stand level disturbances that alter the canopy layer and may cause sites to become unsuitable. Biswell (2010, pers. comm.) and Swingle (2010, pers. comm.) have also observed reduction in numbers or elimination of red tree voles from stands that have been thinned. Hopkins (2010, pers. comm.) found that buffering nests with a 10-ac (4-ha) buffer would result in the presence of nests post-thinning, but he did not attempt to verify vole occupancy through visual observations of voles.

Although State Forest lands are managing part of their landbase to retain and develop some older forest habitat, the lack of survey and protection mechanisms to protect existing tree vole sites, combined with the limited availability of current suitable habitat and intensity of harvest and thinning activities between protected areas, leads us to conclude that existing regulatory mechanisms on State lands are inadequate to ameliorate the threat of habitat loss and fragmentation and provide for the conservation of the North Oregon Coast DPS of the red tree vole.

Summary of Regulatory Mechanisms on State Land

As discussed above under "Regulatory Mechanisms on Private Land," there may be some ancillary benefits to red tree voles from actions taken to protect other wildlife species. In addition to OAR requirements to provide buffers to protect certain wildlife species, ODF provides additional buffers for spotted owls and marbled murrelets, as well as additional retention blocks in the form of terrestrial anchor habitats scattered throughout its ownership. While these areas provide for some habitat retention, some are likely too small and most too isolated to provide for a species with limited dispersal ability, such as the red tree vole. Furthermore, without pre-project surveys for voles, the species will need to serendipitously be in these retention blocks to be afforded any protections. Occupied vole sites outside these areas would be lost with any timber harvest activity. This precludes the opportunity to potentially reduce isolation and provide for additional retention blocks elsewhere on the landscape where tree voles may actually be present, thereby improving their dispersal potential.

Because of the small amounts (13 percent) of complex forest habitat (1 percent older forest and 12 percent layered forest structure) currently available on State lands throughout the DPS, there is limited ability to maintain persistent populations of red tree voles on this ownership. Also, not all areas of these combined structure categories may provide tree vole habitat, considering that empirical evidence indicates only 5 percent of the State ownership within the DPS is currently considered tree vole habitat (Dunk 2009, pp. 5, 7). State Forest Management Plans call for developing more of these older habitats, but these conditions are not expected to be reached for at least 70 years. Moreover, the use of thinning activities to create stands that may be suitable habitat for red tree voles has not been tested; to the extent we can develop the appropriate structure and conditions, it is reasonable to conclude that much of the 15 to 25 percent of the landscape targeted as older forest structural condition may eventually be suitable tree vole habitat. However, as described above, based on the currently observed proportion of suitable red tree vole habitat relative to layered forest conditions, it is likely only some undetermined portion of the 15 to 25 percent of the landscape targeted as layered forest condition may provide suitable habitat. Finally, thinning activities designed to meet these long-term structure targets may place additional limitations on the ability of tree vole populations to be well connected over those next 70 years.

Although the State does manage their forests with an eventual increase in older forest conditions as a goal, most of the State lands within the DPS are managed for some level of continuing timber harvest. The loss and modification of red tree vole habitat on State lands, compounded by isolation of existing habitat as a result of timber harvest, continues under existing regulatory mechanisms. In addition, there are no mechanisms in place to protect existing occupied tree vole sites outside of retention areas. We therefore conclude that existing regulatory mechanisms on State land are inadequate to provide for the conservation of the North Oregon Coast DPS of the red tree vole, as they contribute to threats of habitat destruction, modification, or curtailment under Factor A, as well as the threats of habitat fragmentation and isolation of small populations under Factor E.

Regulatory Mechanisms on Federal Land

Federal lands comprise 22 percent of the DPS (851,000 ac (344,400 ha)) and are concentrated in two separate areas. The southernmost portion lies between U.S. Highway 20 and the Siuslaw River, and makes up roughly two-thirds of the Federal lands within the DPS (Figure 2). The remaining Federal ownership, although more fragmented and dispersed than the southern portion in terms of ownership pattern, is generally located between Lincoln City and Tillamook, with a few scattered parcels of BLM land in Columbia and Washington Counties. The Siuslaw National Forest comprises 41 percent of the Federal land in the DPS, and the Salem and Eugene BLM Districts make up the remainder. Federal lands have been managed under the Northwest Forest Plan (NWFP) (USDA and USDI 1994, entire), although there is past and ongoing litigation that has, and will continue to, affect management planning for BLM within the DPS (see below). Implementation of the NWFP resulted in an 80 to 90 percent reduction of timber harvests from Federal lands in the Coast Range compared to levels in the 1980s (Spies *et al.* 2007b, p. 50). Approximate timber harvests projected for the next 2 years on the Federal ownership in the North Oregon Coast DPS sum to 99 million board feet (231,000 cubic m) on average per year (Herrin 2011, pers. comm.; Nowack 2011, pers. comm.; Wilson 2011, pers. comm.). This may include harvest in some areas within an administrative unit that is not encompassed by the DPS, primarily that portion of the Siuslaw National Forest that lies south of the Siuslaw River (approximately 15 percent of the forest acreage). Currently, all the harvest on

Federal land in the North Oregon Coast DPS occurs as thinning. Harvest intensity (annual harvest per acre of landbase) differs by administrative unit and ranges from 66 board feet per acre (0.066 cubic m per ha) per year on the Siuslaw National Forest to 154 board feet per acre (0.154 cubic m per ha) per year on that portion of the Eugene BLM District within the DPS. Acreages used to calculate harvest intensity may include acres that are not capable of producing forest, and may be slightly underestimated.

Within the DPS, BLM has operated under two different management plans over the past several years. On December 30, 2008, BLM published Records of Decision (ROD) for the Western Oregon Plan Revisions (WOPR), which revised the Resource Management Plans for the BLM units in western Oregon, including those units within the DPS. The WOPR meant that BLM would no longer be managing their land under the standards and guidelines of BLM's 1995 Resource Management Plans, which had adopted the Northwest Forest Plan. On July 16, 2009, the Acting Assistant Secretary for Lands and Minerals administratively withdrew the WOPR RODs. The administrative withdrawal of WOPR was challenged in court (*Douglas Timber Operators, Inc.* v. *Salazar*, 09–1704 JDB (D.D.C.). On March 31, 2011, the United States District Court for the District of Columbia vacated and remanded the administrative withdrawal of the WOPR RODs, effectively reinstating the WOPR RODs as the operative Resource Management Plan for BLM lands within the DPS. However, there remains ongoing litigation, the result of which could affect the implementation of WOPR (e.g. *Pacific Rivers Council* v. *Shepard*, Case No. 3:2011–cv–00442 (D. Or.); *AFRC* v. *Salazar-DOI/Locke*, Case No. 1:11–cv–01174 (D.D.C.)). Our analysis of existing regulatory mechanisms on Federal lands reflects the current management plans that are officially in place. That is, the NWFP for Forest Service lands, and the WOPR for BLM lands.

Of the Federal lands in the DPS, 34 percent are managed as LSRs, and 14 percent are managed as an Adaptive Management Area (AMA), which includes additional LSR management in portions of the AMA (see below). Another 18 percent are managed as Late-Successional Management Area (LSMA). The primary management objectives in LSRs, an NWFP allocation, are to protect and enhance late-successional forest conditions (USDA and USDI 1994, p. C–11). The LSMAs, established under WOPR, have a similar objective as LSRs, with a focus on maintaining and developing habitat for northern spotted owls and marbled murrelets (USDI 2008, p. 2–28). The combined area of LSR and LSMA equals 52 percent of the Federal ownership managed for the purpose of developing and maintaining late-successional conditions, although not all of the acres in these allocations currently meet that condition. Although forest structure can vary widely with vegetation type, disturbance regime, and developmental stage, in Douglas-fir stands of western Oregon, 80 years of age is the point at which stands can begin to develop the structural complexity that is of value to late-successional species (e.g., canopy differentiation and multiple canopy layers; understory development; large limbs; large snags and logs; tree decay and deformities in the form of hollow trees, broken tops, large cavities; and epicormic branching) (USDA and USDI 1994, pp. B–2 through B–7). Thinning and other silvicultural treatments are allowed in LSRs and LSMAs if needed to create and maintain late-successional forest conditions. Within LSRs, thinning is allowed in stands up to 80 years old, except for the Northern Coast AMA, where it is allowed in stands up to 110 years (USDA and USDI 1994, p. C–12). There is no age limit for thinning in LSMAs (USDI 2008, p. 2–28). Salvage after stand-replacement disturbances is allowed in LSRs and LSMAs, although there are different standards and guidelines in place for these allocations (USDA and USDI 1994, pp. C–13 through C–16; USDI 2008, pp. Summary-9, 2–28 to 2–32).

The emphasis of the Northern Coast Range AMA, an NWFP allocation, is to restore and maintain late-successional forest habitat consistent with marbled murrelet guidelines (USDA and USDI 1994, p. D–15) through developing and testing new approaches that integrate ecological, economic, and other social objectives. Although 14 percent of the Federal land in the DPS is allocated as AMA, 10 percent of Federal land is managed as LSR within the AMA, meaning that LSR standards and guidelines are to be followed unless reconsidered as part of the AMA plan. The current AMA plan has retained the original NWFP standards and guidelines for LSRs, so in effect 62 percent of the Federal ownership is currently managed as LSR (52 percent LSR and LSMA, combined, and 10 percent AMA managed as LSR). The one difference in LSR management within the AMA as compared to the rest of the NWFP area is that thinning is allowed in stands up to 110 years of age in the AMA, as described above. Additional areas of older and more structurally complex forest is retained under the WOPR in the Deferred Timber Management Area allocation, but only through the year 2023; this land allocation makes up less than 0.5 percent of the Federal ownership within the DPS.

Of the 34 percent of Federal lands not designated as LSR or AMA in the DPS, 18 percent is classified as either Matrix (6 percent) or Timber Management Area (TMA) (12 percent), NWFP and WOPR land allocations, respectively. These allocations are where commercial timber harvest is expected to occur (*e.g.*, regeneration harvest such as clearcuts).

Allocations to protect streams and other water bodies include Riparian Management Areas (RMA) under the WOPR, and Riparian Reserves (RR) under the NWFP. Under the WOPR, the width of RMAs are reduced for most water bodies by up to half the distances compared to Riparian Reserves under the NWFP (USDA and USDI 1994b, pp. C–30 through C–31; USDI 2008, p. 2–33). Silvicultural activities, such as thinning, are allowed in these allocations to meet specific aquatic and riparian objectives (USDA and USDI 1994, pp. C–30 through C–31; USDI 2008, 2–32 through 2–34). Riparian Management Areas have been mapped under WOPR and comprise 4 percent of the Federal ownership within the DPS. Under the NWFP, stream densities in the Coast Range result in much of the Matrix allocation being overlain by Riparian Reserves that can be anywhere from 150 to 500 ft (76 to 152 m) wide on each side of the stream, depending on the waterbody and site condition (USDA and USDI 1994b, pp. C–30 through C–31; Davis 2009, pers. comm.). Overlaying Riparian Reserves and protections for other species called for in the NWFP can substantially reduce the area of Matrix available for timber harvest. For example, between riparian reserves and other protections required by the NWFP, only 3 percent of the Siuslaw National Forest is available for timber harvest other than thinning treatments designed to meet ecological objectives (Davis 2009, pers. comm.).

The remaining 10 percent of lands in the DPS under Federal ownership are in Congressional Reserves, Administratively Withdrawn Areas, and other areas under special management and not available for timber harvest. These areas may or may not be conducive to developing and maintaining older forest conditions, depending on their underlying management emphasis.

In 2007, the BLM and the Forest Service signed Records of Decision

(USDA 2007, entire; USDI 2007, entire) that eliminated the Survey and Manage mitigation measures from the BLM Resource Management Plans and the Forest Service Land and Resource Management Plans. These decisions were challenged in court (*Conservation Northwest* v. *Rey,* Case No. C–08–1067–JCC (W.D. Wash.)). On December 17, 2009, the court issued a decision finding multiple National Environmental Policy Act (NEPA) inadequacies in the 2007 Final Supplemental Environmental Impact Statement. The parties to this litigation reached a settlement agreement that was approved by the court on July 6, 2011. The settlement agreement reinstates the 2001 Survey and Manage ROD (USDA and USDI 2001, entire), as modified by the settlement agreement, for those Forest Service and BLM units within the area covered by the NWFP. The 2011 Settlement Agreement makes four modifications to the 2001 ROD. It (1) acknowledges existing exemptions (Pechman exemptions) from Survey and Manage Standards and Guidelines as a result of an earlier court-approved stipulation from different litigation (*Northwest Ecosystem Alliance* v. *Rey,* Case No. 04–844–MJP (W.D. Wash.)); (2) updates the 2001 Survey and Manage species list; (3) establishes a transition period for application of the species list; and, (4) establishes new exemption categories (2011 Exemptions), to which known site management may apply. Under the 2011 settlement agreement, the Pechman exemptions continue to apply to projects classified into four categories and include thinning in stands younger than 80 years old, replacing or removing culverts, improving riparian and stream habitat, and using prescribed fire to treat hazardous fuels.

The 2011 settlement agreement establishes seven categories of new exemptions.

The following categories of activities are exempt from pre-disturbance surveys for species on the Survey and Manage list, but known site management may apply: (1) Recreation; (2) fish and wildlife habitat restoration; (3) treatment of weeds and sudden oak death; (4) certain hazardous fuel treatments in Wildland Urban Interface; (5) bridges; (6) non-commercial fuel treatments; and (7) restoration projects involving commercial logging. The 2011 settlement agreement contains specific directions applying known site management for projects applying the 2011 exemptions, which vary depending upon the 2011 exemption applied, and a species' Survey and Manage category.

Although the Survey and Manage standards and guidelines are an artifact of the NWFP—and BLM is currently operating under the WOPR and not the NWFP—as signatories to the Survey and Manage settlement agreement, they are applying the Survey and Manage program, as described above, on their ownership within the DPS. The red tree vole falls under the Survey and Manage standards and guidelines; thus, prior to certain habitat-disturbing activities, surveys and subsequent management of high-priority sites are required for red tree voles. All sites on Federal land within the DPS are considered high-priority sites with the exception of 198,000 ac (80,130 ha) of the southernmost portion of the DPS (primarily located within the Siuslaw River drainage). Some tree vole sites on Federal land in this portion of the DPS would not be considered high-priority sites, depending on the amount of reserve land allocation in the watershed, habitat quality, number of active vole nests detected in survey areas, and the total survey effort (USDA and USDI 2003).

Although federally managed lands are expected to provide for large, well-distributed populations of red tree voles throughout most of their range, the northern Oregon Coast Range north of Highway 20 within the DPS is an exception. For this area, despite of the majority of the Federal land being managed as LSRs or LSMAs, the Final Environmental Impact Statement analyzing the effects of discontinuing the NWFP Survey and Manage program concluded that regardless of the tree vole's status as a Survey and Manage species, the combination of small amounts of Federal land, limited connectivity between these lands, and few known vole sites would result in habitat insufficient to support stable populations of red tree voles north of Highway 20 (USDA and USDI 2007, pp. 291–292). Federal lands provide more habitat for red tree voles than other ownerships in the DPS and have land allocations, such as LSRs, that require management to maintain and restore late-successional conditions that are more suitable as red tree vole habitat. However, the limited amount of Federal lands in the DPS restricts red tree vole distribution and magnifies the effect of habitat loss occurring from stochastic events, further limiting the red tree vole's ability to persist in an area or recolonize new sites (see Factors A and E).

Thinning treatments are allowed in LSRs and LSMAs, but their effect on red tree voles is not well understood. Younger stands may be important for allowing dispersal and short-term persistence of tree voles in landscapes where older forests are either isolated in remnant patches or have been largely eliminated (Swingle 2005, p. 94). Thinning these younger stands, while designed to develop late-successional habitat characteristics in the long term, has the potential to degrade or remove tree vole habitat characteristics in the short term, especially if thinning design does not account for structural features and the connectivity of those features that are important to red tree voles (Swingle and Forsman 2009, p. 284). As reported in USDA and USDI (2002, p. 13), although old, inactive red tree vole nests have been found in thinned stands and shelterwood treatments, no occupied nests have been found, suggesting that red tree voles are susceptible to stand-level disturbances that alter the canopy layer and may cause sites to become unsuitable. Biswell (2010, pers. comm.) and Swingle (2010, pers. comm.) have also observed reduction in numbers or elimination of red tree voles from stands that have been thinned. Hopkins (2010, pers. comm.) found that buffering nests with a 10-ac (4-ha) buffer would result in the presence of nests post-thinning, but he did not attempt to verify vole occupancy through visual observations of voles.

Red tree voles are afforded more protection on Federal lands than on State Forest and private lands within the DPS, primarily as a result of the Survey and Manage protections. Before commencing timber harvest activities (except for thinning activities in stands under 80 years old), projects must be surveyed for tree voles and high priority sites protected. Thirty percent of the Federal ownership is currently considered tree vole habitat; 62 percent of the Federal ownership is in a land allocation wherein management objectives call for retaining and developing late-successional and old forest structural conditions. Another 10 percent are in allocations that preclude timber harvest, although not all of these allocations may develop habitat suitable for tree voles. However, most of the Federal landbase should develop into conditions suitable as red tree vole habitat at some point in the future given the current Federal land management. In addition, conifer-dominated forests in Riparian Reserves and Riparian Management Areas may provide additional future habitat. Thinning activities designed to develop older forest conditions in the long term may limit the dispersal capability and connectivity of local tree vole

populations in the short term. Except for the limited amount and isolated nature of Federal lands north of Highway 20, federally managed lands are expected to provide for large, well-distributed populations of red tree voles throughout the rest of their range within the DPS. Based on the above assessment, we conclude that existing regulatory mechanisms on Federal land are adequate to provide for the conservation of the North Oregon Coast DPS of the red tree vole.

Summary of Regulatory Mechanisms on Federal Land

Although they comprise less than one-quarter of the land area within the DPS, Federal lands provide the majority of remaining high-quality, older forest habitat for red tree voles within the DPS. The implementation of the Northwest Forest Plan in 1994 led to a dramatic decrease in timber harvest on Federal lands. Management direction for the Forest Service (under the NWFP) and BLM (under the WOPR) calls for maintaining or restoring late-successional forest conditions on a majority of these lands within the DPS. Although some level of timber harvest continues on these Federal lands, particularly in the Matrix and Timber Management Area allocations, it affects less than a quarter of the DPS. Some degree of thinning also occurs within LSRs and LSMAs within the DPS, but if managed according to the standards and guidelines of the respective management plans, and if such thinning does not exceed the current rates, the effects of such treatments on red tree voles are believed to be relatively minor. The recent reinstatement of Survey and Manage standards and guidelines contributes to the conservation of the red tree vole and its habitat within the DPS. We therefore consider existing regulatory mechanisms adequate to provide for the conservation of the red tree vole on Federal lands where they occur within the DPS. However, the insufficient quantity of Federal lands and their distribution within the DPS contribute to the threat of habitat fragmentation, isolation, and potential extirpation of local populations due to stochastic events, as detailed in Factor E, below.

Conclusion for Factor D

Existing regulatory mechanisms are inadequate to provide for the protection and management of red tree voles on the 78 percent of the DPS made up of non-Federal (private and State) lands. The State of Oregon has regulatory mechanisms in place on private and State lands designed to provide for commercial timber harvest on relatively short rotation schedules, while simultaneously conserving habitat and protecting specific wildlife species during the course of activities associated with timber growth and harvest. The red tree vole is not one of those specific species targeted for protection under the OAR, and, due to its relatively specialized habitat requirements and limited dispersal abilities, many of the guidelines intended to conserve other wildlife species are not sufficient to provide adequate habitat for the red tree vole. Although some individual red tree voles may enjoy incidental benefits if they are located within tree retention or buffer areas, these small buffer areas are not expected to provide for long-term persistence of red tree vole populations given their isolated nature and the allowance for removal of some buffers if the target species are no longer present. In addition, short rotations and intensive management of the surrounding stands will not likely develop or retain the structural features advantageous to red tree voles, thus contributing to the threat of habitat modification and maintaining the isolation of any tree voles that may be present in these areas. Timber harvest rates are expected to continue at current levels on private lands. Protection measures in addition to the OAR regulations are provided on State Forest lands, allowing for more retained and protected areas on the landscape. State Forests are also being managed to increase the amount of structurally complex forests. However, loss and modification of red tree vole habitat on private and State lands as a result of timber harvest continues under existing regulatory mechanisms. Furthermore, there are no mechanisms in place to locate and protect existing occupied tree vole sites outside of retention areas.

Although Federal lands offer some habitat protection and management, there may not be enough habitat in a condition to provide for the red tree vole north of U.S. Highway 20 where Federal land is limited. There is restricted connectivity among blocks of Federal land in this area, and few known vole sites currently available to recolonize habitat. Given survey and protection measures in place for tree voles, the low level of timber harvest compared to other ownerships, and the projected management of over 62 percent of their landbase to maintain or develop late-successional conditions, current regulatory mechanisms appear to be adequate on Federal lands. However, because we find that existing regulatory mechanisms are not adequate to protect habitat for tree voles on the nearly 80 percent of the DPS that is made up of State or private lands, we conclude that overall, existing regulatory mechanisms are not adequate to protect the DPS from the threats discussed under Factors A and E and, in conjunction with these additional factors, pose a significant threat to the persistence of the North Oregon Coast DPS of the red tree vole.

We have evaluated the best available scientific and commercial data on the inadequacy of existing regulatory mechanisms, and determined that this factor poses a significant threat to the viability of the North Oregon Coast DPS of the red tree vole, when we consider this factor in concert with the other factors impacting the DPS.

Factor E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

Fragmentation and Isolation of Older Forest Habitats

Tree voles in the northern Oregon Coast Range evolved in vast, well-distributed expanses of primarily late-successional forest. By 1936, the amount of large-conifer forest was already below the historical range of 52 to 85 percent of the Coast Range estimated to contain late-successional forest (greater than 80 years old) over the past 1,000 years (Wimberly *et al.* 2000, p. 175; Wimberly and Ohmann 2004, p. 642). In 1936, extensive patches of large-conifer Douglas-fir forest connected much of the central and southern portions of the Coast Range Province. In the northern quarter of the province, patches of large Douglas-fir combined with large spruce-hemlock forest and intermingled with large patches of open and very young stands (Wimberly and Ohmann 2004, pp. 635, 639). Most of those open and young stands encompassed the 300,000 acres (121,410 ha) burned in the 1933 Tillamook fire. By 1996, large blocks of the remaining large-conifer forest were restricted to Federal and State lands in the central portion of the Coast Range Province, having been eliminated from most private lands (Wimberly and Ohmann 2004, p. 635). Elsewhere, large-conifer forests were primarily isolated in scattered fragments on public land. The 1936 area of the Coast Range Province covered by large Douglas-fir (2,052 square mi (5,315 square km)) and large spruce-hemlock (344 square mi (891 square km)) cover types declined by 1996, primarily as a result of timber harvest, resulting in a 58 percent reduction in the total area of large-conifer forest. Conversely, the combined area of small Douglas-fir and spruce-

hemlock forests increased by 87 percent (Wimberly and Ohmann 2004, pp. 639–641).

Not only have amounts of older forest decreased, but the spatial distribution of those forests has changed. Prior to European settlement, vegetation simulations indicate that mature (80–200 years) and old-growth forest (greater than 200 years) patches had the highest densities of all successional stages within the Coast Range Province. In addition, old-growth patches were large, ranging from 810 to 3,280 square mi (2,100 to 8,500 square km), with a median of 1,660 square mi (4,300 square km), while patches of less than 80-year-old forests were generally less than 770 square mi (2,000 square km) (Wimberly 2002, p. 1322). In the Coast Range Province today, the largest old-growth patch is 2.5 square mi (6.5 square km), while the largest patch of early-seral forest (less than 30 years old) is larger than 1,900 square mi (5,000 square km), and the largest patch of 30 to 80-year-old forest is larger than 1,150 square mi (3,000 square km) (Wimberly *et al.* 2004, p. 152).

Within the DPS, we analyzed data compiled as part of the NWFP effectiveness monitoring program (USDA/USDI 2010, unpublished data) for the distribution of late-successional and old-growth (LSOG) patches within the DPS. As part of our analysis, we wanted to see what proportion of the LSOG habitat comprised patches large enough to support tree voles, and how close these patches were to other suitable patches. There is little information on minimum stand sizes used by tree voles and a complete lack of information on what is needed to sustain tree vole populations (USDA and USDI 2000b, p. 7). In Polk and Tillamook Counties, Hopkins (2010, pers. comm.) found vole nests in forest patches as small as 5 to 10 acres (2 to 4 ha) in the oldest (350–400 years), most structurally complex stands available. Huff *et al.* (1992, pp. 6–7) compiled data on actual red tree vole presence and found the mean age of stands in which tree voles were found in the Coast Range was 340 years and the minimum stand size was 75 ac (30 ha), with mean and median stand sizes of 475 and 318 ac (192 and 129 ha), respectively. Whether a minimum patch size of 5 to 10 ac (2 to 4 ha) or even 75 ac (30 ha) can sustain a population of red tree voles over the long term is unknown and is influenced by such things as habitat quality within and surrounding the stand, the position of the stand within the landscape, and the ability of individuals to move among stands (Huff *et al.* 1992, p. 7; Martin and McComb 2003, pp. 571–579). However, in the absence of better information on the stand size needed to sustain tree vole populations (USDA and USDI 2000b, p. 7), we consider the 75-ac (30-ha) minimum patch size identified by Huff *et al.* (1992, pp. 6–7) the best available information to use for our analysis because it represents actual tree vole occurrence and not just presence of a nest. As part of our analysis, we found that 59 percent of the area mapped as LSOG occurred in patches larger than 75 ac (30 ha). If we extrapolate this proportion to Dunk's (2009, p. 7) analysis showing only 11 percent of the DPS containing actual tree vole habitat (418,000 ac (169,165 ha)), we find the suitability potentially further reduced to only 246,620 ac (99,807 ha), or 6 percent of the DPS. This is consistent with Dunk (2009, p. 9), who noted that his work did not take into account habitat fragmentation, connectivity, and metapopulation dynamics that may influence whether populations or individual tree voles could occur within his area of analysis.

It is important to note that even the forested areas identified as individual "patches" through a geographic information systems (GIS) program do not necessarily represent areas of forest with continuous canopy cover. Although these patches of forest are technically connected at some level, inspection of the data reveal that they are for the most part highly porous and discontinuous, and we performed no analysis to filter out stands that may be so porous or discontinuous as to provide no interior habitat. Furthermore, the LSOG definition used as part of the NWFP monitoring program (mean tree DBH of 20 in (50.8 cm) or greater; canopy cover 10 percent or greater; all tree species included) can include stands that do not necessarily equate to red tree vole habitat and represents a substantial overestimate. For example, while the LSOG dataset identified 759,968 ac (307,559 ha) of LSOG within the DPS, Dunk (2009, pp. 4, 7) found red tree vole habitat to comprise approximately 425,000 ac (172,000 ha) of the DPS (see Continuing Modification and Current Condition of Red Tree Vole Habitat in Factor A, above). There are several reasons why the LSOG database represents a liberal (i.e., overly generous) description of red tree vole habitat. First, the dataset included stands with canopy cover as low as 10 percent, which is well below the minimum canopy cover of 53 percent and even further below the mean of 78 percent for stands in which Swingle (2005, p. 39), as one example, found tree vole nests. The dataset also included hardwood species as part of the canopy cover component allowing for the possibility of LSOG patches comprising primarily hardwood stands with scattered large conifers. While tree voles have been found in mixed conifer/hardwood stands, their exclusive diet of conifer needles would limit the habitat capability of stands that are primarily hardwood. Therefore, our analysis of remaining older forest patches in the DPS provides an overestimate in terms of remaining potential tree vole habitat, given that the LSOG data used provide a liberal characterization of tree vole habitat. Furthermore, the GIS pixel aggregation used likely characterized some of the data as patches that would in reality be too porous to function as tree vole habitat, increasing the potential for overestimation. Applying the proportion of this LSOG data set that meets the minimum forest patch size to the area of DPS considered suitable tree vole habitat (Dunk 2009, p. 7), an analysis considered a likely overestimate of tree vole occupancy (see *Factor A.* Continuing Modification and Current Condition of Red Tree Vole Habitat, above), we find only 6 percent of the DPS may be in suitable habitat that is of a large enough patch size to sustain tree voles. This suggests that the remaining potentially suitable habitat for tree voles is highly fragmented, which further lessens the probability of long-term persistence of red tree voles under current conditions in the DPS.

In simulated pre-European settlement forests of the Coast Range Province, most forests less than 200 years old were within 0.4 mi (1 km) of an old-growth forest patch. This pattern has reversed, with a considerable increase in isolation of old-growth forest patches (Wimberly *et al.* 2004, p. 152). Our analysis of the LSOG forest data provided by the NWFP effectiveness monitoring program indicates that in the DPS, the average distance between LSOG forest patches greater than 75 ac (30 ha) in size was 1,745 ft (532 m). Larger patches greater than 500 ac (202 ha) in size were separated by 6,158 ft (1,877 m) on average. This increasing isolation of LSOG forest patches due to maintenance of younger stands in the intervening areas poses a threat to the red tree vole, as the dispersal capability of this species is so limited. As noted earlier, the greatest known dispersal distance for an individual red tree vole is 1,115 ft (340 m) (Biswell and Meslow, unpublished data referenced in USDA and USDI 2000b, p. 8), but shorter distances from 10 to 246 ft (3 to 75 m) appear to be more the norm for dispersing subadults (Swingle 2005, p.

63). The current average distance between patches of LSOG forest in the DPS thus exceeds the known dispersal distances of red tree voles. A matrix of surrounding younger forest is not entirely inhospitable habitat for dispersing red tree voles, but survivorship in such habitats is likely reduced. Whether red tree voles can successfully disperse between remaining patches of fragmented habitat depends on their vagility and tolerance for the intervening matrix habitat (Pardini 2004, p. 2581).

Historically, dispersal between trees in areas of more contiguous older forest would not have been a limiting factor for red tree voles, but under the current conditions of fragmentation, the ability of individuals to disperse between patches of remaining high quality habitat is restricted. Limited dispersal can translate into a lack of sufficient gene flow to maintain diversity and evolutionary potential within the population, possible inbreeding depression, Allee effects (e.g., failure to locate a mate), and other problems (e.g., Soulé 1980, entire; Terborgh and Winter 1980, pp. 129–130; Shaffer 1981, p. 131; Gilpin and Soulé 1986, pp. 26–27; Lande 1988, pp. 1457–1458). The potential for the local loss of populations is high, as remnant habitat patches formerly occupied by tree voles may not be recolonized due to the distance between habitat fragments and the short-distance dispersal of the species, leading to local extirpation and further isolation of the remaining small populations, and possibly eventual extinction (see Isolation of Populations and Small Population Size, below). As noted above, although we do not have standardized, quantitative survey data, the fact that red tree voles are increasingly difficult to find and have apparently disappeared from some areas where they were formerly known to occur suggests that current habitat conditions are not conducive to the successful dispersal or maintenance of red tree vole populations within the DPS.

Highly suitable red tree vole habitat (that with the greatest strength of selection) is quite rare throughout the range of the red tree vole (Dunk and Hawley 2009, p. 632) and is even more restricted within the North Oregon Coast DPS (Dunk 2009, pp. 4–5). Moreover, large blocks of older forest (greater than 1,000 ac (400 ha)) are restricted primarily to Federal lands, with contiguous blocks separated by great distances (Moeur *et al.* 2005, p. 77). Fragmentation complicates habitat availability for red tree voles, which select for patches of large tree structure where fragmentation is minimized (Martin and McComb 2002, p. 262); having evolved in extensive areas of relatively more contiguous late-successional forest, tree voles are especially vulnerable to the negative effects of fragmentation and isolation due to their limited dispersal capability. Within the DPS, virtually all of the Federal land lies in two widely separated clusters (Figure 2). Much of the southern portion of the DPS, south of U.S. Highway 20, is Federal land, with the other cluster of Federal land lying north of Highway 20, mainly between Lincoln City and Tillamook. As most of the remaining high-quality habitat for red tree voles within the DPS is restricted to these two clusters of Federal lands, there is little redundancy for tree vole populations within the DPS, and loss of either cluster would result in the single remaining cluster and its associated tree vole population being highly vulnerable to extirpation through some stochastic event, such as wildfire. These two blocks of Federal ownership are separated by primarily private and some State lands. Except for a small patch of checkerboard BLM ownership in southeast Columbia and northeast Yamhill Counties, along with a few small State parks, ownership north of Tillamook consists almost entirely of private timberland and lands managed by the Oregon Department of Forestry (Tillamook and Clatsop State Forests).

Implementing current land management policies in the Coast Range is projected to provide a modest increase (approximately 20 percent) in red tree vole habitat over the next 100 years, primarily on public lands (Spies *et al.* 2007b, p. 53). However, red tree vole populations appear to be decreasing in the face of current threats to their habitat. Therefore, we conclude that this limited increase in suitable habitat that may develop on public lands over an extended length of time will not be sufficient to address the lack of connectivity that currently exists between Federal lands, due to land management practices on the intervening lands (USDA and USDI 2007, p. 291). Furthermore, currently small, isolated populations of tree voles may not be capable of persisting over the length of time required to enjoy the benefits of this projected increase in suitable habitat, but may more likely be subject to local extirpations in the intervening time period. The Final Environmental Impact Statement analyzing the effects of discontinuing the NWFP Survey and Manage program concluded that the combination of small amounts of Federal land, limited connectivity between these lands, and few known vole sites north of Highway 20 would result in habitat insufficient to support stable populations of red tree voles (USDA and USDI 2007, pp. 291–292). The authors of the report further concluded that due to these vulnerabilities, "every site is critical for persistence" for the red tree vole in Oregon's North Coast Range north of Highway 20 (USDA and USDI 2007, p. 292). Given the fragmented nature of Federal lands providing late-successional conditions in the DPS and the limited connectivity between these remaining blocks, it is unlikely that the small projected increase in suitable habitat that may develop over the next 100 years on Federal lands will be sufficient to offset the more immediate threats of habitat destruction, modification, and fragmentation that threaten the North Oregon Coast population of the red tree vole.

Summary of Fragmentation and Isolation of Older Forest Habitats

Red tree voles are considered habitat specialists and are strongly associated with large, relatively more contiguous areas of conifer forests with late-successional characteristics; they are not adapted to fragmented or patchy habitats (Martin and McComb 2002, p. 262). The older forest habitat associated with red tree voles has been significantly reduced through historical timber harvest, and as discussed under *Factor A*, above, ongoing management for timber production maintains much of the remaining older forest habitat in a fragmented and isolated condition, surrounded by younger forests of lower quality habitat for tree voles. We analyzed data compiled as part of the NWFP effectiveness monitoring program (USDA/USDI 2010, unpublished data) and found that of the remaining older forest within the DPS, 59 percent is in patches greater than 75 ac (30 ha), but these patches comprise only 6 percent of the entire DPS. The average distance between the remaining patches that are at least 75 ac (30 ha) in size exceeds the known dispersal distances of red tree voles. This suggests that red tree voles are unlikely to persist over the long term in most of the remaining patches of older forest habitats within the DPS, because most of them are likely too small or too isolated to support tree vole populations. Although the surrounding younger forests may serve as interim or dispersal habitat, the evidence suggests that such forest conditions are unlikely to support persistent populations of red tree voles. Furthermore, our evaluation suggests that the remaining older forest

habitat for tree voles is highly fragmented, which further lessens the probability of long-term persistence of red tree voles under current conditions in the DPS due to the limited dispersal capability of the species, and other consequences of isolation (see Isolation of Populations and Small Population Size, below).

Most of the remaining high-quality habitat for red tree voles in the DPS is restricted to Federal lands; however, these lands make up only 22 percent of the area within the DPS, and they occur in two widely spaced clusters, one north of Highway 20 and one south of Highway 20. Thus, there is little redundancy for tree vole populations within the DPS, and loss of either cluster on Federal lands would result in the single remaining cluster and its associated tree vole population being highly vulnerable to extirpation or even extinction through some stochastic event, such as wildfire (see Climate Change, below). Under present conditions, the Federal lands north of Highway 20 are already considered insufficient to support stable populations of red tree voles (USDA and USDI 2007, pp. 291–292).

Under the current conditions of habitat fragmentation within the DPS, the ability of red tree voles to disperse between patches of remaining high-quality habitat are extremely restricted, and the evidence suggests that any remaining tree vole populations within the DPS are likely relatively small. The potential for the local loss of populations is therefore high, as remnant habitat patches formerly occupied by tree voles may not be recolonized due to the distance between habitat fragments and the short-distance dispersal capabilities of the species, leading to local extirpation and further isolation of the remaining small populations, and possibly eventual extinction (see Isolation of Populations and Small Population Size, below). Furthermore, ongoing timber harvest in surrounding areas of younger forests contributes to the threat of habitat fragmentation and isolation, as discussed above in Factors A and D. Therefore, based on the above evaluation, we conclude that the fragmentation and isolation of older forest habitats pose a significant threat to the North Oregon Coast DPS of the red tree vole.

Climate Change

General Impacts. Climate change presents substantial uncertainty regarding future vegetation and habitat conditions in the North Oregon Coast DPS. Reduction and isolation of red tree vole habitat has been identified as a substantial threat to their persistence. Changing climate could further reduce tree vole habitat in ways that are difficult to predict.

Globally, poleward and upward elevational shifts in the ranges of plant and animal species are being observed and evidence indicates recent warming is influencing this change in distribution (Parmesan 2006, pp. 648–649; IPCC 2007, p. 8; Marris 2007, entire). In North America, and specifically in the Pacific Northwest, effects of forest pathogens, insects, and fire on forests are expected to increase, resulting in an extended period of high fire risk and large increases in area burned (IPCC 2007, p. 14; Karl *et al.* 2009, pp. 136–137; OCCRI 2010, pp. 16–18; Shafer *et al.* 2010, pp. 183–185). The pattern of higher summer temperatures and earlier spring snowmelt, leading to greater summer moisture deficits and consequent increased fire risk, has already been observed in the forests of the Pacific Northwest (Karl *et al.* 2009, p. 136). Ecosystem resilience is expected to be exceeded by the unprecedented combination of climate change, its associated disturbances, and other ecosystem pressures such as land-use change and resource over-exploitation (IPCC 2007, p. 11). These projections discussed above indicate further reduction and isolation of red tree vole habitat over the next century.

Red tree voles in the North Oregon Coast DPS cannot shift their range farther north due to the existing barrier of the Columbia River, which defines the northern boundary of their current and historical range. In addition, their range already occupies the summit of the Oregon Coast Range, so a shift to higher elevations is also not possible. Climate change assessments predict possible extinctions of such local populations if they cannot shift their ranges in response to environmental change (Karl *et al.* 2009, p. 137).

Increased Frequency and Magnitude of Wildfire due to Climate Change. In the western hemlock and Sitka spruce plant series that dominates the Coast Range, fires tend to be rare but are usually stand-replacing events when they take place, although low and moderate severity fires also occur (Impara 1997, p. 92). Sediment core data show mean fire return intervals of 230 to 240 years over the past 2,700 years (Long *et al.* 1998, p. 786; Long and Whitlock 2002, p. 223). Three large fires, ranging from 300,000 to 800,000 acres (120,000 to 325,000 ha), occurred in the DPS in the 1800s, in addition to the Tillamook fires of 1933–1951 (Morris 1934, pp. 317–322, 328; Pyne 1982, pp. 336–337; Agee 1993, p. 212; Wimberly *et al.* 2000, p. 172). Starting in the mid-1800s, climate change, combined with Euro-American settlement, may have influenced the onset of large-scale fires (Weisberg and Swanson 2003, p. 25). Another complication in these wetter forests has been a pattern of multiple reburns that occurred, such as the Tillamook burns of 1933, 1939, 1945, and 1951. Reburns may or may not add large amounts of additional area to the original burn, but they have the potential to impede the development of the stand for decades, delaying the ultimate return to older forest habitat suitable for red tree voles (Agee 1993, p. 213). Forests in the Pacific Northwest face a possible increased risk of large-scale fires within the foreseeable future; under the conditions of anticipated climate change, the effects of forest pathogens and fire on forests are expected to increase, resulting in an extended period of high fire risk and large increases in area burned (IPCC 2007, p. 14; Karl *et al.* 2009, pp. 136–137). Most recently, the Oregon Climate Change Research Institute predicted that large fires will become more common in the forests west of the Cascades, which includes the forests of the North Oregon Coast Range; estimated increases in regional forest areas burned over the next century ranged from 180 to 300 percent (OCCRI 2010, p. 16).

Considering that the majority of the remaining tree vole habitat in the DPS is limited to Federal land, which comprises a total of roughly 850,000 ac (344,000 ha) and is restricted to two separate clusters in the DPS, it is certainly possible to lose much of the Federal land in either of these blocks to a single stand-replacement fire, further limiting habitat and restricting the range of the tree vole in the DPS. Fire suppression organization and tactics have improved since the large fires of the last two centuries, resulting in a reduction in stand-replacement fires (Wimberly *et al.* 2000, p. 178), although Weisberg and Swanson (2003, p. 25) note that suppression success may have been influenced by the reduction in fuel accumulations that these extensive fires accomplished. Regardless, the intense, large, high-severity fires that can occur in the Coast Range are driven by severe weather events (droughts or east wind patterns) (Agee 1997, p. 154), conditions under which fire suppression is severely hampered at best and ineffectual at worst (Impara 1997, pp. 262–263). Although large fires occurred within the DPS historically, in the past there were many additional areas of older forest

that were less isolated from other older forest stands and could serve as refugia for tree voles displaced from forests that burned; under current conditions, there are few such refugia available (Wimberly 2002, p. 1322; Wimberly *et al.* 2004, p. 152) (see Modification of Oregon Coast Range Vegetation above). Given that we have evidence of past fires in the Coast Range that burned areas of up to 800,000 ac (325,000 ha), an amount roughly twice as large as either of the remaining clusters of Federal land within the DPS, and that projections under anticipated conditions of climate change point to the increased risk and magnitude of fire in this region (e.g., OCCRI 2010, p. 16), we believe it is reasonably likely that a single stand-replacing fire could occur within the foreseeable future that would eliminate much of the remaining suitable habitat for tree voles within the DPS.

Summary of Climate Change

The uncertainty in climate change models prevents a specific assessment of potential future threats to the North Oregon Coast DPS of the red tree vole as a consequence of projected warming trends and the various environmental and ecological changes associated with increasing temperatures. However, the direction of these future trends indicate that climate change will likely exacerbate some of the key threats to the DPS, such as an increased probability of large wildfires which may result in the further destruction, modification, fragmentation, and isolation of older forest habitats, and evidence suggests that such changes may already be occurring. High-quality habitat for red tree voles within the DPS is largely restricted to two clusters of Federal lands, and these areas are small enough that a single stand-replacing fire could potentially concentrate the remaining red tree voles to primarily a single population that would be highly vulnerable to extirpation or extinction from future stochastic events. Furthermore, red tree voles within the DPS are restricted in their ability to shift their range in response to changes that may take place as a consequence of climate change. We therefore conclude that the environmental effects resulting from climate change, by itself or in combination with other factors, exacerbate threats to the North Oregon Coast DPS of the red tree vole.

Swiss Needle Cast

A large-scale disturbance event currently ongoing in the Oregon Coast Range is the spread of Swiss needle cast, a foliage disease specific to Douglas-fir caused by the fungus *Phaeocryptopus gaeumannii*. It is typically found in Douglas-fir grown outside of its native range, but in western Oregon it is primarily found, and is more consistently severe, along the western slope of the central and northern Oregon Coast Range, which overlaps both the Sitka spruce and western hemlock plant series. Douglas-fir accounted for less than 20 percent of the forest composition prior to the 1940s in this portion of the Coast Range, but timber harvest and large-scale planting of Douglas-fir on cutover areas make it the dominant species today. The wetter, milder weather, combined with a uniform distribution of the host species, favor the fungus and help spread the disease (Hansen *et al.* 2000, p. 777; Shaw 2008, pp. 1, 3). In Oregon, Swiss needle cast is geographically limited to western Oregon and there is no evidence of it expanding. Even so, it has affected about 1 million ac (405,000 ha), much of that in the northern and central Oregon Coast Range of the DPS. It is roughly estimated that about half of the land base is moderately afflicted by Swiss needle cast, and about 10 percent of the area is severely afflicted by this disease (Filip 2009, pers. comm.).

Swiss needle cast causes premature needle loss which, although rarely lethal, reduces tree growth rates by 20 to 55 percent (Shaw 2008, pp. 1–2). Most of the research on this disease has occurred in managed plantations less than 40 years old (Shaw 2009, pers. comm.), although it is known to limit growth in established overstory trees greater than 100 years old, even within mixed-species stands (Black *et al.* 2010, p. 1680). Forest pathologists are just beginning to understand how to manage this disease. Thinning treatments to improve tree vigor in infected stands do not appear to exacerbate the spread of the disease or its effects on tree health. However, young Douglas-firs infected with the pathogen are not expected to outgrow the disease (Black *et al.* 2010, p. 1680) and may never develop the large structures that are integral features of older forests. Given our current knowledge, a likely scenario in these stands is that the non-host Sitka spruce and western hemlock will become the dominant cover, moving these sites closer to the historical species composition present before earlier forest management converted them to Douglas-fir (Filip 2009, pers. comm.). Where these non-host species are deficient or absent in infected stands, reestablishing them in the stand is the only known treatment certain to reduce the spread and extent of the disease. There is still much uncertainty in our understanding of this pathogen to project future trends in vegetation. While it could result in a return of western hemlock and Sitka spruce that were removed as a result of conversion to Douglas-fir plantations, the commercial value of Douglas-fir is a major incentive to continue research to develop pathogen treatments that would allow continued existence of healthy Douglas-fir stands. In addition, projected effects of climate change (see *Increased Frequency and Magnitude of Wildfire due to Climate Change*, above) could alter the extent of the fog zone in which Swiss needle cast is prevalent.

Summary of Swiss Needle Cast

Swiss needle cast is a foliage disease specific to Douglas-fir, and is found in western Oregon along the western slope of the central and northern Oregon Coast Range. Some of the most severe infestations of Swiss needle cast occur in the Sitka spruce plant series, which is the plant series in the DPS where tree voles forage primarily on western hemlock and Sitka spruce. However, the disease also occurs in the western hemlock plant series on the western slope of the Oregon Coast Range, where most of the voles that forage on Douglas-fir tend to occur. Thus, while the disease may ultimately improve foraging sources for some red tree voles over the long term, it may remove forage for others. In addition, Swiss needle cast may affect forest characteristics in mixed-species stands that affect tree voles and are unrelated to foraging, such as canopy closure and structural components that may provide cover. Therefore, the potential impact that this disease may have on the tree vole population is not well understood at this time. Although Swiss needle cast may potentially have some negative effects on red tree voles, at this point in time we do not have evidence that the impacts of Swiss needle cast are so severe as to pose a significant threat to the North Oregon Coast DPS of the red tree vole.

Isolation of Populations and Small Population Size

There are multiple features of red tree vole biology and life history that limit their ability to respond to habitat loss and alteration, as well as to stochastic environmental events. Due to their current restricted distribution within the DPS, stochastic events could further isolate individuals and consequently limit their recolonization capability. Small home ranges and limited dispersal distances of red tree voles, as well as their apparent reluctance to

cross large openings, likely make it difficult for them to recolonize isolated habitat patches. As discussed above in the section "Fragmentation and Isolation of Older Forest Habitats," within the DPS, forests with the late-successional characteristics that represent high-quality habitat for red tree voles presently exist in a highly fragmented state, the average distance between the minimum patch sizes associated with nesting exceeded the known maximum dispersal distance of red tree voles. Based on this information, we conclude that high-quality older forest habitats for red tree voles within the DPS are in a highly fragmented and isolated condition.

Without the ability to move between isolated patches of occupied habitat, local populations act essentially as islands vulnerable to local extirpation, resulting from a disequilibrium between local extinction and immigration events (Brown and Kodric-Brown 1977, p. 445). Some species are adapted to living in patchy environments and may exist as a series of local populations connected by occasional movement of individuals between them, known as "metapopulations" (e.g., Hanski and Gilpin 1991, p. 7). However, it is presumed that the red tree vole was formerly more continuously distributed throughout the late-successional forests of the Oregon Coast Range and has only recently become "insularized" (isolated into islands of habitat) through habitat fragmentation. The limited dispersal ability of the red tree vole indicates this species is not adapted to living in a patchy environment, where long-distance movements between populations are occasionally required. Although in many cases the tree voles within the DPS are not separated by completely inhospitable matrix habitat, but may only be isolated by surrounding areas of forest in earlier seral stages, the apparent disappearance of red tree voles from many areas where they were formerly found leads us to believe that successful recolonization of formerly occupied areas is likely infrequent, if it occurs at all (see discussion of Past and Current Range and Abundance under Factor A, above). As noted above, the average distance between patches of potentially suitable habitat at a minimum of 75 ac (30 ha) in size in the DPS exceeds the greatest known dispersal distance for a red tree vole. The apparent disappearance of red tree voles from areas where they were formerly found, combined with the isolation of remaining habitat patches at distances on average greater than the known dispersal capability of red tree voles, leads us to conclude that movement of individuals between patches of older forest habitat is infrequent at best. Therefore, we conclude that at present, the red tree vole most likely persists as a set of relatively isolated populations in discrete patches of older forest habitat and surrounding lower quality, younger forest, with little if any interaction between these populations.

Although we do not have direct evidence of red tree vole population sizes within the DPS, the evidence before us suggests that remaining local tree vole populations are likely relatively small and isolated. We base this conclusion on the limited amount of tree vole habitat remaining within the DPS, on the fragmented and isolated nature of the remaining habitat, and on evidence from recent search efforts, which have yielded few voles relative to historical search efforts, suggesting that red tree vole numbers are greatly reduced in the DPS compared to historical conditions (see Background and Past and Current Range and Abundance under Factor A, above, for details). That isolated populations are more likely to decline than those that are not isolated (e.g., Davies *et al.* 2000, p. 1456) is discussed above. In addition to isolation, population size also plays an important role in extinction risk. Small, isolated populations place species at greater risk of local extirpation or extinction due to a variety of factors, including loss of genetic variability, inbreeding depression, demographic stochasticity, environmental stochasticity, and natural catastrophes (Franklin 1980, entire; Shaffer 1981, p. 131; Gilpin and Soulé 1986, pp. 25–33; Soulé and Simberloff 1986, pp. 28–32; Lehmkuhl and Ruggiero 1991, p. 37; Lande 1994, entire). Stochastic events that put small populations at risk of extinction include, but are not limited to, variation in birth and death rates, fluctuations in gender ratio, inbreeding depression, and random environmental disturbances such as fire, wind, and climatic shifts (e.g., Shaffer 1981, p. 131; Gilpin and Soulé 1986, p. 27; Blomqvist *et al.* 2010, entire). The isolation of populations and consequent loss of genetic interchange may lead to genetic deterioration, for example, that has negative impacts on the population at different timescales. In the short term, populations may suffer the deleterious consequences of inbreeding; over the long term, the loss of genetic variability diminishes the capacity of the species to evolve by adapting to changes in the environment (e.g., Franklin 1980, pp. 140–144; Soulé and Simberloff 1986, pp. 28–29; Nunney and Campbell 1993, pp. 236–237; Reed and Frankham 2003, pp. 233–234; Blomqvist *et al.* 2010, entire). Although we do not have any information on relative levels of genetic variability in red tree vole populations, Swingle (2005, p. 82) suggested that genetic inbreeding may be maintaining cream-colored and melanistic tree vole pelage polymorphisms at a few populations within the red tree vole's range. Swingle (2005, p. 82) did not elaborate on his suggestion, nor account for the possibility that alternative processes may be maintaining these different color forms.

Based on this evaluation, we conclude that the isolation of red tree vole populations due to fragmentation of their remaining older forest habitat, independent of the total area of suitable habitat that may be left, poses a significant threat to the red tree vole within the DPS.

Summary of Isolation of Populations and Small Population Size

Remaining red tree vole populations in the North Oregon Coast DPS likely persist primarily in isolated patches of fragmented, older forest habitat, and the surrounding younger forest habitats are subject to continuing habitat modification due to timber harvest that tends to maintain the forest in this highly fragmented condition (see Factor A discussion and Fragmentation and Isolation of Older Forest Habitats, above). Red tree voles are considered highly vulnerable to local extirpations due to habitat fragmentation or loss (Huff *et al.* 1992, p. 1). Species that have recently become isolated through habitat fragmentation do not necessarily function as a metapopulation and, especially in the case of species with poor dispersal abilities, local populations run a high risk of extinction when extirpations outpace dispersal and immigration (Gilpin 1987, pp. 136, 138; Hanski and Gilpin 1991, p. 13; Hanski *et al.* 1996, p. 539; Harrison 2008, pp. 82–83; Sodhi *et al.* 2009, p. 518). Some conservation biologists suggest that for species with poor dispersal abilities, habitat fragmentation is likely more important than habitat area as a determinant of extinction probability (Shaffer and Sansom 1985, p. 146). The low reproductive rate and lengthy development period of young, relative to other vole species, adds further to the inherent vulnerabilities of the red tree vole and may limit population growth; the isolation of tree voles through insularization likely exacerbates these inherent vulnerabilities (Bolger *et al.* 1997, p. 562).

For the reasons given above, based on the observed level of habitat fragmentation and isolation that has occurred within the DPS, the presumed small size of remaining tree vole populations, and the inherent vulnerabilities of the red tree vole to local extirpation or extinction due to its life history characteristics, we conclude that the isolation of populations and the consequences of small population size pose a significant threat to the red tree vole within the North Oregon Coast DPS.

Summary of Factor E

Population isolation, presumed small local population size, and potential loss of populations to large-scale disturbance events exacerbated by climate change, combined with the life-history traits that put red tree voles at a disadvantage in moving between and recolonizing new habitats in an already fragmented landscape, are the principal threats considered under this factor that significantly affect the species. Although precise quantitative estimates are not available, recent surveys suggest that populations have substantially declined in the DPS, and that red tree voles are likely at greatly reduced numbers relative to their historical abundance. Furthermore, our analysis of LSOG data from the NWFP effectiveness monitoring program indicates that, within the DPS, any remaining highly suitable habitat is highly fragmented and patchy in occurrence. Patches of forest meeting older forest standards that are overly generous for red tree voles, and thus are likely overestimating the size and number of remaining patches that provide suitable habitat, indicate that the average distance between the remaining patches that are at least 75 ac (30 ha) in size exceeds the known dispersal distances of red tree voles, and the difference is even greater for patches that are more than 500 ac (202 ha) in size.

The narrow habitat requirements, low mobility, low reproductive potential, and low dispersal ability of red tree voles limits their movement among existing patches of remnant habitat, and analysis of remaining large patches of potentially suitable habitat suggests that populations of red tree voles in the DPS likely are largely isolated from one another. This information, in conjunction with evidence that the older forest habitats associated with red tree voles are highly fragmented and restricted in size, leads us to conclude that remaining populations of red tree voles are likely small in size. Furthermore, with little or no exchange of individuals between them, these small, isolated populations are at risk of local extirpation due to a variety of factors, including loss of genetic variability, inbreeding depression, demographic stochasticity, environmental stochasticity, and disturbance events. The lack of redundancy in red tree vole populations within the North Oregon Coast DPS renders these populations highly vulnerable to large-scale catastrophes or disturbance events, such as wildfire, and this vulnerability is exacerbated by climate change.

Conclusion for Factor E

Red tree voles are considered highly vulnerable to local extirpations due to habitat fragmentation or loss, and the evidence suggests that the vast majority of forest with potentially suitable characteristics for tree voles persists in very small, disconnected patches in the DPS. The continuing modification of forest habitats, as discussed under Factor A, maintains the older forest habitats associated with red tree voles in this fragmented and isolated condition. The narrow habitat requirements, low mobility, relatively low reproductive potential, and low dispersal ability of red tree voles limits their movement among existing patches of remnant habitat. This fragmentation of habitat, resulting in small, isolated populations of tree voles, can have significant negative impacts on the North Oregon Coast DPS of the red tree vole, including potential inbreeding depression, loss of genetic diversity, and vulnerability to extirpation as a consequence of various stochastic events. Although large-scale disturbance events such as fire are not common in the Coast Range, we have historical evidence of occasional very large fires in this region, and climate change projections indicate a likely increase in both fire risk and fire size. At present, red tree voles are thus largely without available refugia to sustain the population in the face of events such as severe, large-scale fires. Under these conditions, red tree voles in the North Oregon Coast DPS are unlikely to experience the habitat connectivity and redundancy needed to sustain their populations over the long term. Based on the above evaluation, we conclude that the threats of continued fragmentation and isolation of older forest habitats, as potentially exacerbated by the environmental effects of climate change, and the isolation of populations and consequences of small population size pose a significant threat to the red tree vole within the North Oregon Coast DPS. We did not have sufficient evidence to suggest that Swiss needle cast poses a significant threat to the DPS at this point in time.

We have evaluated the best available scientific and commercial data on other natural or manmade factors affecting the continued existence of the North Oregon Coast DPS of the red tree vole, including the effects of habitat fragmentation, as exacerbated by the environmental effects of climate change, isolation of small populations, and consequences of small population size, and determined that this factor poses a significant threat to the viability of the North Oregon Coast DPS of the red tree vole, when we consider this factor in concert with the other factors impacting the DPS.

Finding

As required by the Act, we considered the five factors in assessing whether the North Oregon Coast DPS of the red tree vole is threatened or endangered throughout all of its range. We have carefully assessed the best scientific and commercial data available regarding the past, present, and future threats faced by the North Oregon Coast DPS of the red tree vole. We reviewed the petition, information available in our files, and other published and unpublished information submitted to us by the public following our 90-day petition finding, and we consulted with recognized experts on red tree vole biology, habitat, and genetics, as well as with experts on the vegetation of the northern Oregon Coast Range. In addition, we consulted with other Federal and State resource agencies and completed our own analyses of the available data.

On the basis of the best scientific and commercial data available, we find that the population segment satisfies the discreteness and significance elements of the DPS policy and therefore qualifies as a DPS under our policy. We further find that listing the North Oregon Coast DPS of the red tree vole is warranted. However, listing the North Oregon Coast DPS of the red tree vole is precluded by higher priority listing actions at this time, as discussed in the *Preclusion and Expeditious Progress* section below.

Although quantitative data are not available to estimate red tree vole populations, comparing past collection efforts with recent surveys leads us to conclude that tree voles are substantially more difficult to find now than they were historically. In some areas within the DPS, red tree voles are now not found, or are scarce, where they were formerly relatively abundant. This information, in conjunction with the knowledge that red tree voles are closely associated with older forest habitats and strong quantitative data

showing an unprecedented loss of older forest habitat in the Oregon Coast Range Province, insufficient area of remaining late-successional old-growth habitat, and large distances between those remaining older forest patches that exceed known dispersal distances of tree voles, leads us to conclude that tree vole populations have substantially declined from past levels. Whereas, the literature provides multiple examples of voles nesting in younger stands, virtually all analyses comparing vole nest presence or relative abundance of nests in younger versus older stands have shown an increased use or selection of older stands. Alhough the role of younger stands is unclear, in weighing the available evidence, including a recent modeling effort specific to habitat suitability for red tree voles, we conclude that older forests are necessary habitat for red tree voles and that younger stands will rarely substitute as habitat in the complete absence of older stands. However, we recognize that younger stands may facilitate dispersal or short-term persistence in landscapes where older forests are isolated or infrequent.

Amounts of older forest habitat within the Coast Range Province have been reduced below historical levels, primarily through timber harvest (Wimberley *et al.* 2000, p. 176). The occurrence of forest structural conditions outside of the historical range of variability may not in itself be a problem with respect to red tree vole persistence, considering their persistence through historical large-scale fires that removed habitat. However, the frequency and duration of those conditions outside the historical range of variability will ultimately affect the persistence of the red tree vole. Historically, old-growth forest (greater than 200 years old) was well dispersed (Wimberly *et al.* 2004, p. 152) within the Oregon Coast Province and there were large tracts of suitable habitat that served as refugia in which tree voles could persist while adjacent disturbed areas grew into habitat (Wimberley *et al.* 2000, p. 177). Such areas likely served as source areas to recolonize newly developed habitats (Pulliam 1988, pp. 658–660; Dias 1996, p. 326). However, if the amount or duration of unsuitable habitat exceeds the ability of the species to persist in refugia and ultimately recolonize available areas, the species may eventually be extirpated. Hence, the longer habitat stays in an unsuitable condition, the greater the risk to the population (Wimberly *et al.* 2000, p. 177).

Under current management conditions, the vast majority of remaining red tree vole habitat in the DPS is, and will continue to be, limited to Federal lands. Federal lands make up less than a quarter of the area within the DPS, and are limited to two disparate clusters of land. Although 62 percent of the Federal ownership in the DPS is currently managed under the NWFP and the WOPR to develop and maintain late-successional conditions that would be conducive to red tree vole habitat, only 30 percent of these Federal lands are currently estimated to provide suitable habitat for red tree voles (Dunk 2009, pp. 5, 7). Even if the entire Federal ownership provided older forest habitat conducive to red tree vole occupation, this would still represent a significant reduction of older forest habitat based on estimates from simulations of forest conditions in the Coast Range Province during the past 3,000 years (Wimberly *et al.* 2000, pp. 173–175; Nonaka and Spies 2005, p. 1740). Although much of this loss was historical, it led to the present condition of insufficient habitat for red tree voles today; at present, less than 1 percent of the habitat within the DPS is in the condition for which red tree voles showed the greatest strength of selection for nesting, and nearly 90 percent of the DPS is in a condition avoided by red tree voles. Most of the lands in the nearly 80 percent of the DPS under State and private ownership are managed for timber production. Although regulatory mechanisms exist that are intended to provide for the conservation of wildlife and habitats during the course of timber harvest activities on private and State lands, the habitat requirements and life-history characteristics of the red tree vole are such that these regulatory mechanisms are inadequate to prevent the ongoing modification, fragmentation, and isolation of red tree vole habitat on these lands.

Our own analysis of NWFP data demonstrates the fragmentation and isolation of large patches of older forest remain within the DPS. Fifty-nine percent of the LSOG within the DPS comprised patches greater than 75 ac (30 ha), the minimum stand size in which tree voles are found, and the average distance between these patches exceeds the known dispersal limits of tree voles (USFWS 2010, unpublished data). Furthermore, the criteria used to define the initial dataset of late-successional forest used in our analysis includes forest conditions that are not suitable for red tree voles (e.g., low canopy cover, predominant hardwood cover), so these results are overestimates of habitat remaining for red tree voles. Finally, applying the proportion of large patches within the DPS onto the amount of tree vole habitat estimated within the DPS (Dunk 2009, p. 7) indicates only about 6 percent of the DPS is in a condition of suitable habitat in patches large enough to provide for tree voles, and this analysis is considered a likely overestimate of tree vole habitat. Clearly, existing and projected amounts of older conifer forest habitat conducive to red tree vole persistence are less than the amounts projected to have occurred historically and with which tree voles have evolved. High-quality older forest habitat remains in isolated fragments, most of which are too small to support tree voles, and are so widely separated as to be likely well beyond the dispersal capability of the species. Unlike historical conditions, which were highly stochastic, these changes are likely to be permanent. Based on our analysis of best available information, we conclude the remaining high-quality habitat within the DPS is likely insufficient to support red tree voles over the long term, and persists in a fragmented and isolated condition that renders local populations of red tree voles vulnerable to extirpation or extinction through a variety of processes, including genetic stochasticity, demographic stochasticity, environmental stochasticity, and natural catastrophes.

The significant historical losses of older forest with the late-successional characteristics selected by red tree voles, in conjunction with ongoing practices that maintain the remaining patches of older forest in a highly fragmented and isolated condition by managing the surrounding younger forest stands on short-rotation schedules, pose a threat to the persistence of the North Oregon Coast DPS of the red tree vole through the destruction, modification, or curtailment of its habitat or range.

Furthermore, barring a significant change in the Oregon Forest Practices Rules and Act, loss, modification, and fragmentation of red tree vole habitat is likely to continue on most of the 62 percent of the DPS that is privately owned. Forecasts for State forest land, which makes up almost all of the 16 percent of the DPS in State ownership, are to manage 15 to 25 percent of their land in older forest structure, with another 15 to 25 percent to be managed as layered forest structure. However, it is expected to take 70 years before reaching these amounts, with only 8 percent of the State lands currently existing in these structural conditions. Active management via thinning to reach these targeted structures, while potentially developing suitable tree vole habitat in the long term, may further

limit the potential for well-connected tree vole populations in the ensuing 70 years. Current regulations on private and State lands provide for timber harvest on relatively short rotation schedules; this contributes to the modification of older forest habitat, and maintains forest in a low-quality condition for red tree voles. Although some incidental benefits may accrue to individual red tree voles from the buffers put in place to protect habitat and targeted wildlife species under the Forest Practices Rules, in general the patches of forest remaining under these guidelines are too small and isolated to provide for the persistence of red tree voles. In some harvest units, the regulations require the retention of only two trees per ac (0.8 trees per ha), and the size of these trees is well below that normally used by red tree voles. The linear perpendicular extent of tree retention along fishbearing streams under the State regulations is dramatically less (about one-fifteenth) than that conserved under Federal regulations. The scarcity of red tree voles throughout much of the DPS where they were formerly found with ease further suggests the forest areas retained under the existing regulatory mechanisms are insufficient to support persistent tree vole populations or successful dispersal and recolonization. Finally, unlike on Federal lands, there are no mechanisms in place on private or State lands to survey for tree voles and manage for sites that are located. We have therefore found existing regulatory mechanisms on private and State lands inadequate to provide for the conservation of the red tree vole within the DPS.

The current presumed limited population size and distribution of the red tree vole within a small portion of the DPS makes the species particularly vulnerable to random environmental disturbances such as fires. Evidence from past fire events indicates that stand replacement fires have historically occurred in this area large enough that, if fires of similar size were to occur now or in the foreseeable future, could eliminate most, if not all, of the largest patches of remaining high-quality older forest habitat in the DPS. This is of particular concern since the stronghold of the red tree vole population in this DPS is likely concentrated in a single cluster of Federal lands south of Highway 20, and the potential loss of the high quality habitat on these lands to an event such as a fire would remove the greatest source population of red tree voles in the DPS. Other populations are more fragmented and isolated and have little potential to contribute to the overall persistence of the DPS under current conditions of habitat fragmentation. Population connectivity is thus a particular concern given the species' reduced numbers, habitat specialization and limited dispersal capabilities, combined with the limited distribution of older forests located primarily on Federal land within the range of the red tree vole (USDA and USDI 2000a, p. 186). Even on the cluster of Federal lands north of Highway 20, remaining habitat has been deemed insufficient to support stable populations of red tree voles (USDA and USDI 2007, pp. 291–292).

Finally, though the precise effects of environmental changes resulting from climate change on red tree vole habitat are unknown, the projected increase in size and severity of forest disturbance vectors such as fire and pathogens are expected to further reduce and isolate habitat and tree vole populations. In addition, projected shifts in the range of species to the north and to increased elevations would further reduce the available habitat for the red tree vole, given that it is already at its northern and elevational limit within the North Oregon Coast DPS. Therefore, we have additionally found that the North Oregon Coast DPS of the red tree vole is threatened by the exacerbating effects of other natural or manmade factors affecting its continued existence.

Given the threats described above, we find that the North Oregon Coast DPS of the red tree vole is in danger of extinction now or in the foreseeable future and therefore warrants listing. We have considered time spans of several projections of forest conditions and associated tree vole response and other measures of biodiversity to determine how far into the future is reasonably foreseeable. Trends in timber harvest and biodiversity in the Oregon Coast Range are projected for the next century (Johnson *et al.* 2007, entire; Spies *et al.* 2007a, b, entire). Although older forest structure is expected to develop on some areas of State land and in those Federal land allocations managed for late-successional conditions, existing stands are in a variety of age and structural stages and it will be several decades before those stands develop older forest structure and late-successional conditions. For example, on State lands, it is estimated that it will take at least 70 years to develop the targeted amounts of forest complexity (ODF 2010c, p. I–13). Congruent with the time spans stated above, we have determined the foreseeable future for the red tree vole to be approximately 70 to 100 years.

In summary, several threats, combined with the limited ability of the red tree vole to respond to those threats, contribute to our finding that the North Oregon Coast DPS of the red tree vole is in danger of extinction now or in the foreseeable future. Older forest habitats that provide for red tree voles are limited and highly fragmented, while ongoing forest practices in much of the DPS maintain the remaining patches of older forest in a highly fragmented and isolated condition by managing the surrounding younger forest stands on short-rotation schedules. Existing regulatory mechanisms on private and State lands result in the maintenance of this condition on most of their ownership. Although a portion of the State forest land will be managed towards older forest structure, it is expected to take 70 years before reaching these conditions. Red tree vole populations within the North Oregon Coast DPS appear to be relatively small and isolated. Multiple features of red tree vole biology and life history limit their ability to respond to the above noted habitat loss and alteration. These features include small home ranges, limited dispersal distances, low reproductive potential relative to other closely related rodents, a reluctance to cross large openings, and likely increased exposure to predation in certain habitat conditions (e.g. younger stands or in areas with insufficient canopy cover that forces voles to leave trees and travel on the ground). Such life history characteristics make it difficult for red tree voles to persist in or recolonize already isolated habitat patches. Although some land management allocations within the DPS call for developing older forest conditions that may provide habitat for the red tree vole, it will be decades before those areas attain those conditions. In the interim, the red tree vole remains vulnerable to random environmental disturbances that may remove or further isolate large blocks of already limited habitat (e.g. large wind storms or stand-replacing fire events). Finally, small and isolated populations such as the red tree vole are more vulnerable to extirpation within the DPS due to a variety of factors including loss of genetic variability, inbreeding depression, and demographic stochasticity. Because of the existing habitat conditions, the limited ability of the red tree vole to persist in much of the DPS, and its vulnerability in the foreseeable future until habitat conditions improve, we find that the North Oregon Coast DPS of the red tree

vole is in danger of extinction now or in the foreseeable future.

We reviewed the available information to determine if the existing and foreseeable threats render the DPS at risk of extinction now such that issuing an emergency regulation temporarily listing the species under section 4(b)(7) of the Act is warranted. We have determined that issuing an emergency regulation temporarily listing the species is not warranted for the North Oregon Coast DPS of the red tree vole at this time, because voles are currently distributed across multiple areas within the DPS and we do not believe there are any potential threats of such great immediacy, severity, or scope that would simultaneously threaten all of the known populations with the imminent risk of extinction. However, if at any time we determine that an emergency regulation temporarily listing of the North Oregon Coast DPS of the red tree vole is warranted, we will initiate this action at that time.

Listing Priority Number

The Service adopted guidelines on September 21, 1983 (48 FR 43098) to establish a rational system for utilizing available appropriations to the highest priority species when adding species to the Lists of Endangered or Threatened Wildlife and Plants or reclassifying threatened species to endangered status. These guidelines, titled "Endangered and Threatened Species Listing and Recovery Priority Guidelines" address the immediacy and magnitude of threats, and the level of taxonomic distinctiveness by assigning priority in descending order to monotypic genera (genus with one species), full species, and subspecies (or equivalently, distinct population segments of vertebrates). The lower the listing priority number (LPN), the higher the listing priority (that is, a species with an LPN of 1 would have the highest listing priority).

As a result of our analysis of the best available scientific and commercial information, we assigned the North Oregon Coast DPS of the red tree vole an LPN of 9, based on our finding that the DPS faces threats that are imminent and of moderate to low magnitude, including the present or threatened destruction, modification, or curtailment of its habitat; the inadequacy of existing regulatory mechanisms; and the impacts of chance environmental and demographic events on an already isolated population. We consider the threat magnitude moderate because, although the entire population is experiencing threats, the impact of those threats is more pronounced on private and State ownerships than on Federal lands, where more of the existing tree vole habitat is likely to remain. For example, our analysis indicates that remaining forested habitat on Federal lands provides a measure of security to extant vole populations. Although timber harvest across the DPS is a concern, the loss of suitable vole habitat to timber harvest has declined, and the current status of the species may reflect a lag effect from previous timber harvest. At the same time, much of the Federal forested lands are growing toward older conditions and management of these lands is targeted toward increasing the older forest condition of the landscape. In consideration of all these factors, we find the magnitude of threats to be moderate to low. We consider all of these threats imminent because they are currently occurring within the DPS.

Preclusion and Expeditious Progress

Preclusion is a function of the listing priority of a species in relation to the resources that are available and the cost and relative priority of competing demands for those resources. Thus, in any given fiscal year (FY), multiple factors dictate whether it will be possible to undertake work on a listing proposal regulation or whether promulgation of such a proposal is precluded by higher priority listing actions.

The resources available for listing actions are determined through the annual Congressional appropriations process. The appropriation for the Listing Program is available to support work involving the following listing actions: Proposed and final listing rules; 90-day and 12-month findings on petitions to add species to the Lists of Endangered and Threatened Wildlife and Plants (Lists) or to change the status of a species from threatened to endangered; annual "resubmitted" petition findings on prior warranted-but-precluded petition findings as required under section 4(b)(3)(C)(i) of the Act; critical habitat petition findings; proposed and final rules designating critical habitat; and litigation-related, administrative, and program-management functions (including preparing and allocating budgets, responding to Congressional and public inquiries, and conducting public outreach regarding listing and critical habitat). The work involved in preparing various listing documents can be extensive and may include, but is not limited to: Gathering and assessing the best scientific and commercial data available and conducting analyses used as the basis for our decisions; writing and publishing documents; and obtaining, reviewing, and evaluating public comments and peer review comments on proposed rules and incorporating relevant information into final rules. The number of listing actions that we can undertake in a given year also is influenced by the complexity of those listing actions; that is, more complex actions generally are more costly. The median cost for preparing and publishing a 90-day finding is $39,276; for a 12-month finding, $100,690; for a proposed rule with critical habitat, $345,000; and for a final listing rule with critical habitat, $305,000.

We cannot spend more than is appropriated for the Listing Program without violating the Anti-Deficiency Act (see 31 U.S.C. 1341(a)(1)(A)). In addition, in FY 1998 and for each fiscal year since then, Congress has placed a statutory cap on funds that may be expended for the Listing Program, equal to the amount expressly appropriated for that purpose in that fiscal year. This cap was designed to prevent funds appropriated for other functions under the Act (for example, recovery funds for removing species from the Lists), or for other Service programs, from being used for Listing Program actions (see House Report 105–163, 105th Congress, 1st Session, July 1, 1997).

Since FY 2002, the Service's budget has included a critical habitat subcap to ensure that some funds are available for other work in the Listing Program ("The critical habitat designation subcap will ensure that some funding is available to address other listing activities" (House Report No. 107–103, 107th Congress, 1st Session, June 19, 2001)). In FY 2002 and each year until FY 2006, the Service has had to use virtually the entire critical habitat subcap to address court-mandated designations of critical habitat, and consequently none of the critical habitat subcap funds have been available for other listing activities. In some FYs since 2006, we have been able to use some of the critical habitat subcap funds to fund proposed listing determinations for high-priority candidate species. In other FYs, while we were unable to use any of the critical habitat subcap funds to fund proposed listing determinations, we did use some of this money to fund the critical habitat portion of some proposed listing determinations so that the proposed listing determination and proposed critical habitat designation could be combined into one rule, thereby being more efficient in our work. At this time, for FY 2011, we plan to use some of the critical habitat subcap funds to fund proposed listing determinations.

We make our determinations of preclusion on a nationwide basis to ensure that the species most in need of listing will be addressed first and also because we allocate our listing budget on a nationwide basis. Through the listing cap, the critical habitat subcap, and the amount of funds needed to address court-mandated critical habitat designations, Congress and the courts have in effect determined the amount of money available for other listing activities nationwide. Therefore, the funds in the listing cap, other than those needed to address court-mandated critical habitat for already listed species, set the limits on our determinations of preclusion and expeditious progress.

Congress identified the availability of resources as the only basis for deferring the initiation of a rulemaking that is warranted. The Conference Report accompanying Public Law 97–304 (Endangered Species Act Amendments of 1982), which established the current statutory deadlines and the warranted-but-precluded finding, states that the amendments were "not intended to allow the Secretary to delay commencing the rulemaking process for any reason other than that the existence of pending or imminent proposals to list species subject to a greater degree of threat would make allocation of resources to such a petition [that is, for a lower-ranking species] unwise." Although that statement appeared to refer specifically to the "to the maximum extent practicable" limitation on the 90-day deadline for making a "substantial information" finding, that finding is made at the point when the Service is deciding whether or not to commence a status review that will determine the degree of threats facing the species, and therefore the analysis underlying the statement is more relevant to the use of the warranted-but-precluded finding, which is made when the Service has already determined the degree of threats facing the species and is deciding whether or not to commence a rulemaking.

In FY 2011, on April 15, 2011, Congress passed the Full-Year Continuing Appropriations Act (Pub. L. 112–10), which provides funding through September 30, 2011. The Service has $20,902,000 for the listing program. Of that, $9,472,000 is being used for determinations of critical habitat for already listed species. Also $500,000 is appropriated for foreign species listings under the Act. The Service thus has $10,930,000 available to fund work in the following categories: Compliance with court orders and court-approved settlement agreements requiring that petition findings or listing determinations be completed by a specific date; section 4 (of the Act) listing actions with absolute statutory deadlines; essential litigation-related, administrative, and listing program-management functions; and high-priority listing actions for some of our candidate species. In FY 2010, the Service received many new petitions and a single petition to list 404 species. The receipt of petitions for a large number of species is consuming the Service's listing funding that is not dedicated to meeting court-ordered commitments. Absent some ability to balance effort among listing duties under existing funding levels, the Service is only able to initiate a few new listing determinations for candidate species in FY 2011.

In 2009, the responsibility for listing foreign species under the Act was transferred from the Division of Scientific Authority, International Affairs Program, to the Endangered Species Program. Therefore, starting in FY 2010, we used a portion of our funding to work on the actions described above for listing actions related to foreign species. In FY 2011, we anticipate using $1,500,000 for work on listing actions for foreign species, which reduces funding available for domestic listing actions; however, currently only $500,000 has been allocated for this function. Although there are no foreign species issues included in our high-priority listing actions at this time, many actions have statutory or court-approved settlement deadlines, thus increasing their priority. The budget allocations for each specific listing action are identified in the Service's FY 2011 Allocation Table (part of our record).

For the above reasons, funding a proposed listing determination for the North Oregon Coast DPS of the red tree vole is precluded by court-ordered and court-approved settlement agreements, listing actions with absolute statutory deadlines, and work on proposed listing determinations for those candidate species with a higher listing priority (*i.e.*, candidate species with LPNs of 1–8).

Based on our September 21, 1983, guidelines for assigning an LPN for each candidate species (48 FR 43098), we have a significant number of species with a LPN of 2. Using these guidelines, we assign each candidate an LPN of 1 to 12, depending on the magnitude of threats (high or moderate to low), immediacy of threats (imminent or nonimminent), and taxonomic status of the species (in order of priority: monotypic genus (a species that is the sole member of a genus); species; or part of a species (subspecies, or distinct population segment)). The lower the listing priority number, the higher the listing priority (that is, a species with an LPN of 1 would have the highest listing priority).

Because of the large number of high-priority species, we have further ranked the candidate species with an LPN of 2 by using the following extinction-risk type criteria: International Union for the Conservation of Nature and Natural Resources (IUCN) Red list status/rank, Heritage rank (provided by NatureServe), Heritage threat rank (provided by NatureServe), and species currently with fewer than 50 individuals, or 4 or fewer populations. Those species with the highest IUCN rank (critically endangered), the highest Heritage rank (G1), the highest Heritage threat rank (substantial, imminent threats), and currently with fewer than 50 individuals, or fewer than 4 populations, originally comprised a group of approximately 40 candidate species ("Top 40"). These 40 candidate species have had the highest priority to receive funding to work on a proposed listing determination. As we work on proposed and final listing rules for those 40 candidates, we apply the ranking criteria to the next group of candidates with an LPN of 2 and 3 to determine the next set of highest priority candidate species. Finally, proposed rules for reclassification of threatened species to endangered species are lower priority, because as listed species, they are already afforded the protections of the Act and implementing regulations. However, for efficiency reasons, we may choose to work on a proposed rule to reclassify a species to endangered if we can combine this with work that is subject to a court-determined deadline.

With our workload so much bigger than the amount of funds we have to accomplish it, it is important that we be as efficient as possible in our listing process. Therefore, as we work on proposed rules for the highest priority species in the next several years, we are preparing multi-species proposals when appropriate, and these may include species with lower priority if they overlap geographically or have the same threats as a species with an LPN of 2. In addition, we take into consideration the availability of staff resources when we determine which high-priority species will receive funding to minimize the amount of time and resources required to complete each listing action.

As explained above, a determination that listing is warranted but precluded must also demonstrate that expeditious progress is being made to add and

remove qualified species to and from the Lists of Endangered and Threatened Wildlife and Plants. As with our "precluded" finding, the evaluation of whether progress in adding qualified species to the Lists has been expeditious is a function of the resources available for listing and the competing demands for those funds. (Although we do not discuss it in detail here, we are also making expeditious progress in removing species from the list under the Recovery program in light of the resource available for delisting, which is funded by a separate line item in the budget of the Endangered Species Program. So far during FY 2011, we have completed delisting rules for three species.) Given the limited resources available for listing, we find that we are making expeditious progress in FY 2011 in the Listing Program. This progress included preparing and publishing the following determinations:

FY 2011 COMPLETED LISTING ACTIONS

Publication date	Title	Actions	FR pages
10/6/2010	Endangered Status for the Altamaha Spinymussel and Designation of Critical Habitat.	Proposed Listing Endangered	75 FR 61664–61690.
10/7/2010	12-Month Finding on a Petition to list the Sacramento Splittail as Endangered or Threatened.	Notice of 12-month petition finding, Not warranted.	75 FR 62070–62095.
10/28/2010	Endangered Status and Designation of Critical Habitat for Spikedace and Loach Minnow.	Proposed Listing Endangered (uplisting).	75 FR 66481–66552.
11/2/2010	90-Day Finding on a Petition to List the Bay Springs Salamander as Endangered.	Notice of 90-day Petition Finding, Not substantial.	75 FR 67341–67343.
11/2/2010	Determination of Endangered Status for the Georgia Pigtoe Mussel, Interrupted Rocksnail, and Rough Hornsnail and Designation of Critical Habitat.	Final Listing Endangered	75 FR 67511–67550.
11/2/2010	Listing the Rayed Bean and Snuffbox as Endangered	Proposed Listing Endangered	75 FR 67551–67583.
11/4/2010	12-Month Finding on a Petition to List Cirsium wrightii (Wright's Marsh Thistle) as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded.	75 FR 67925–67944.
12/14/2010	Endangered Status for Dunes Sagebrush Lizard	Proposed Listing Endangered	75 FR 77801–77817.
12/14/2010	12-Month Finding on a Petition to List the North American Wolverine as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded.	75 FR 78029–78061.
12/14/2010	12-Month Finding on a Petition to List the Sonoran Population of the Desert Tortoise as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded.	75 FR 78093–78146.
12/15/2010	12-Month Finding on a Petition to List *Astragalus microcymbus and Astragalus schmolliae* as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded.	75 FR 78513–78556.
12/28/2010	Listing Seven Brazilian Bird Species as Endangered Throughout Their Range.	Final Listing Endangered	75 FR 81793–81815.
1/4/2011	90-Day Finding on a Petition to List the Red Knot subspecies *Calidris canutus roselaari* as Endangered.	Notice of 90-day Petition Finding, Not substantial.	76 FR 304–311.
1/19/2011	Endangered Status for the Sheepnose and Spectaclecase Mussels.	Proposed Listing Endangered	76 FR 3392–3420.
2/10/2011	12-Month Finding on a Petition to List the Pacific Walrus as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 7634–7679.
2/17/2011	90-Day Finding on a Petition To List the Sand Verbena Moth as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial.	76 FR 9309–9318.
2/22/2011	Determination of Threatened Status for the New Zealand-Australia Distinct Population Segment of the Southern Rockhopper Penguin.	Final Listing Threatened	76 FR 9681–9692.
2/22/2011	12-Month Finding on a Petition to List *Solanum conocarpum* (marron bacora) as Endangered.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 9722–9733.
2/23/2011	12-Month Finding on a Petition to List Thorne's Hairstreak Butterfly as Endangered.	Notice of 12-month petition finding, Not warranted.	76 FR 9991–10003.
2/23/2011	12-Month Finding on a Petition to List *Astragalus hamiltonii, Penstemon flowersii, Eriogonum soredium, Lepidium ostleri,* and *Trifolium friscanum* as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded & Not Warranted.	76 FR 10166–10203.
2/24/2011	90-Day Finding on a Petition to List the Wild Plains Bison or Each of Four Distinct Population Segments as Threatened.	Notice of 90-day Petition Finding, Not substantial.	76 FR 10299–10310.
2/24/2011	90-Day Finding on a Petition to List the Unsilvered Fritillary Butterfly as Threatened or Endangered.	Notice of 90-day Petition Finding, Not substantial.	76 FR 10310–10319.
3/8/2011	12-Month Finding on a Petition to List the Mt. Charleston Blue Butterfly as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 12667–12683.
3/8/2011	90-Day Finding on a Petition to List the Texas Kangaroo Rat as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial.	76 FR 12683–12690.
3/10/2011	Initiation of Status Review for Longfin Smelt	Notice of Status Review	76 FR 13121–13122.
3/15/2011	Withdrawal of Proposed Rule to List the Flat-tailed Horned Lizard as Threatened.	Proposed rule withdrawal	76 FR 14210–14268.
3/15/2011	Proposed Threatened Status for the Chiricahua Leopard Frog and Proposed Designation of Critical Habitat.	Proposed Listing Threatened; Proposed Designation of Critical Habitat.	76 FR 14126–14207.
3/22/2011	12-Month Finding on a Petition to List the Berry Cave Salamander as Endangered.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 15919–15932.
4/1/2011	90-Day Finding on a Petition to List the Spring Pygmy Sunfish as Endangered.	Notice of 90-day Petition Finding, Substantial.	76 FR 18138–18143.
4/5/2011	12-Month Finding on a Petition to List the Bearmouth Mountainsnail, Byrne Resort Mountainsnail, and Meltwater Lednian Stonefly as Endangered or Threatened.	Notice of 12-month petition finding, Not Warranted and Warranted but precluded.	76 FR 18684–18701.

FY 2011 COMPLETED LISTING ACTIONS—Continued

Publication date	Title	Actions	FR pages
4/5/2011	90-Day Finding on a Petition To List the Peary Caribou and Dolphin and Union population of the Barren-ground Caribou as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial.	76 FR 18701–18706.
4/12/2011	Proposed Endangered Status for the Three Forks Springsnail and San Bernardino Springsnail, and Proposed Designation of Critical Habitat.	Proposed Listing Endangered; Proposed Designation of Critical Habitat.	76 FR 20464–20488.
4/13/2011	90-Day Finding on a Petition To List Spring Mountains Acastus Checkerspot Butterfly as Endangered.	Notice of 90-day Petition Finding, Substantial.	76 FR 20613–20622.
4/14/2011	90-Day Finding on a Petition to List the Prairie Chub as Threatened or Endangered.	Notice of 90-day Petition Finding, Substantial.	76 FR 20911–20918.
4/14/2011	12-Month Finding on a Petition to List Hermes Copper Butterfly as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 20918–20939.
4/26/2011	90-Day Finding on a Petition to List the Arapahoe Snowfly as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial.	76 FR 23256–23265.
4/26/2011	90-Day Finding on a Petition to List the Smooth-Billed Ani as Threatened or Endangered.	Notice of 90-day Petition Finding, Not substantial.	76 FR 23265–23271.
5/12/2011	Withdrawal of the Proposed Rule to List the Mountain Plover as Threatened.	Proposed Rule, Withdrawal	76 FR 27756–27799.
5/25/2011	90-Day Finding on a Petition To List the Spot-tailed Earless Lizard as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial.	76 FR 30082–30087.
5/26/2011	Listing the Salmon-Crested Cockatoo as Threatened Throughout its Range with Special Rule.	Final Listing Threatened	76 FR 30758–30780.
5/31/2011	12-Month Finding on a Petition to List Puerto Rican Harlequin Butterfly as Endangered.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 31282–31294.
6/2/2011	90-Day Finding on a Petition to Reclassify the Straight-Horned Markhor (*Capra falconeri jerdoni*) of Torghar Hills as Threatened.	Notice of 90-day Petition Finding, Substantial.	76 FR 31903–31906.
6/2/2011	90-Day Finding on a Petition to List the Golden-winged Warbler as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial.	76 FR 31920–31926.
6/7/2011	12-Month Finding on a Petition to List the Striped Newt as Threatened.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 32911–32929.
6/9/2011	12-Month Finding on a Petition to List *Abronia ammophila*, *Agrostis rossiae*, *Astragalus proimanthus*, *Boechera* (*Arabis*) *pusilla*, and *Penstemon gibbensii* as Threatened or Endangered.	Notice of 12-month petition finding, Not Warranted and Warranted but precluded.	76 FR 33924–33965.
6/21/2011	90-Day Finding on a Petition to List the Utah Population of the Gila Monster as an Endangered or a Threatened Distinct Population Segment.	Notice of 90-day Petition Finding, Not substantial.	76 FR 36049–36053.
6/21/2011	Revised 90-Day Finding on a Petition To Reclassify the Utah Prairie Dog From Threatened to Endangered.	Notice of 90-day Petition Finding, Not substantial.	76 FR 36053–36068.
6/28/2011	12-Month Finding on a Petition to List *Castanea pumila* var. *ozarkensis* as Threatened or Endangered.	Notice of 12-month petition finding, Not warranted.	76 FR 37706–37716.
6/29/2011	90-Day Finding on a Petition to List the Eastern Small-Footed Bat and the Northern Long-Eared Bat as Threatened or Endangered.	Notice of 90-day Petition Finding, Substantial.	76 FR 38095–38106.
6/30/2011	12-Month Finding on a Petition to List a Distinct Population Segment of the Fisher in Its United States Northern Rocky Mountain Range as Endangered or Threatened with Critical Habitat.	Notice of 12-month petition finding, Not warranted.	76 FR 38504–38532.
7/12/2011	90-Day Finding on a Petition to List the Bay Skipper as Threatened or Endangered.	Notice of 90-day Petition Finding, Substantial.	76 FR 40868–40871.
7/19/2011	12-Month Finding on a Petition to List *Pinus albicaulis* as Endangered or Threatened with Critical Habitat.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 42631–42654.
7/19/2011	Petition To List Grand Canyon Cave Pseudoscorpion	Notice of 12-month petition finding, Not warranted.	76 FR 42654–42658.
7/26/2011	12-Month Finding on a Petition to List the Giant Palouse Earthworm (*Driloleriius americanus*) as Threatened or Endangered.	Notice of 12-month petition finding, Not warranted.	76 FR 44547–44564.
7/26/2011	12-Month Finding on a Petition to List the Frigid Ambersnail as Endangered.	Notice of 12-month petition finding, Not warranted.	76 FR 44566–44569.
7/27/2011	Determination of Endangered Status for *Ipomopsis polyantha* (Pagosa Skyrocket) and Threatened Status for *Penstemon debilis* (Parachute Beardtongue) and *Phacelia submutica* (DeBeque Phacelia).	Final Listing Endangered, Threatened.	76 FR 45054–45075.
7/27/2011	12-Month Finding on a Petition to List the Gopher Tortoise as Threatened in the Eastern Portion of its Range.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 45130–45162.
8/2/2011	Proposed Endangered Status for the Chupadera Springsnail (*Pyrgulopsis chupaderae*) and Proposed Designation of Critical Habitat.	Proposed Listing Endangered	76 FR 46218–46234.
8/2/2011	90-Day Finding on a Petition to List the Straight Snowfly and Idaho Snowfly as Endangered.	Notice of 90-day Petition Finding, Not substantial.	76 FR 46238–46251.
8/2/2011	12-Month Finding on a Petition to List the Redrock Stonefly as Endangered or Threatened.	Notice of 12-month petition finding, Not warranted.	76 FR 46251–46266.

FY 2011 COMPLETED LISTING ACTIONS—Continued

Publication date	Title	Actions	FR pages
8/2/2011	Listing 23 Species on Oahu as Endangered and Designating Critical Habitat for 124 Species.	Proposed Listing Endangered	76 FR 46362–46594.
8/4/2011	90-Day Finding on a Petition To List Six Sand Dune Beetles as Endangered or Threatened.	Notice of 90-day Petition Finding, Not substantial and substantial.	76 FR 47123–47133.
8/9/2011	Endangered Status for the Cumberland Darter, Rush Darter, Yellowcheek Darter, Chucky Madtom, and Laurel Dace.	Final Listing Endangered	76 FR 48722–48741.
8/9/2011	12-Month Finding on a Petition to List the Nueces River and Plateau Shiners as Threatened or Endangered.	Notice of 12-month petition finding, Not warranted.	76 FR 48777–48788.
8/9/2011	Four Foreign Parrot Species [crimson shining parrot, white cockatoo, Philippine cockatoo, yellow-crested cockatoo].	Proposed Listing Endangered and Threatened; Notice of 12-month petition finding, Not warranted.	76 FR 49202–49236.
8/10/2011	Proposed Listing of the Miami Blue Butterfly as Endangered, and Proposed Listing of the Cassius Blue, Ceraunus Blue, and Nickerbean Blue Butterflies as Threatened Due to Similarity of Appearance to the Miami Blue Butterfly.	Proposed Listing Endangered Similarity of Appearance.	76 FR 49408–49412.
8/10/2011	90-Day Finding on a Petition To List the Saltmarsh Topminnow as Threatened or Endangered Under the Endangered Species Act.	Notice of 90-day Petition Finding, Substantial.	76 FR 49412–49417.
8/10/2011	Emergency Listing of the Miami Blue Butterfly as Endangered, and Emergency Listing of the Cassius Blue, Ceraunus Blue, and Nickerbean Blue Butterflies as Threatened Due to Similarity of Appearance to the Miami Blue Butterfly.	Emergency Listing Endangered Similarity of Appearance.	76 FR 49542–49567.
8/11/2011	Listing Six Foreign Birds as Endangered Throughout Their Range.	Final Listing Endangered	76 FR 50052–50080.
8/17/2011	90-Day Finding on a Petition to List the Leona's Little Blue Butterfly as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial.	76 FR 50971–50979.

Our expeditious progress also includes work on listing actions that we funded in FY 2010 and FY 2011 but have not yet been completed to date. These actions are listed below. Actions in the top section of the table are being conducted under a deadline set by a court. Actions in the middle section of the table are being conducted to meet statutory timelines, that is, timelines required under the Act. Actions in the bottom section of the table are high-priority listing actions. These actions include work primarily on species with an LPN of 2, and, as discussed above, selection of these species is partially based on available staff resources, and when appropriate, include species with a lower priority if they overlap geographically or have the same threats as the species with the high priority. Including these species together in the same proposed rule results in considerable savings in time and funding, when compared to preparing separate proposed rules for each of them in the future.

ACTIONS FUNDED IN FY 2010 AND FY 2011 BUT NOT YET COMPLETED

Species	Action
Actions Subject to Court Order/Settlement Agreement	
4 parrot species (military macaw, yellow-billed parrot, red-crowned parrot, scarlet macaw)[5]	12-month petition finding.
4 parrot species (blue-headed macaw, great green macaw, grey-cheeked parakeet, hyacinth macaw)[5]	12-month petition finding.
Longfin smelt	12-month petition finding.
Actions with Statutory Deadlines	
Casey's june beetle	Final listing determination.
5 Bird species from Colombia and Ecuador	Final listing determination.
Queen Charlotte goshawk	Final listing determination.
Ozark hellbender[4]	Final listing determination.
Altamaha spinymussel[3]	Final listing determination.
6 Birds from Peru & Bolivia	Final listing determination.
Loggerhead sea turtle (assist National Marine Fisheries Service)[5]	Final listing determination.
2 mussels (rayed bean (LPN = 2), snuffbox No LPN)[5]	Final listing determination.
CA golden trout[4]	12-month petition finding.
Black-footed albatross	12-month petition finding.
Mojave fringe-toed lizard[1]	12-month petition finding.
Kokanee—Lake Sammamish population[1]	12-month petition finding.
Cactus ferruginous pygmy-owl[1]	12-month petition finding.
Northern leopard frog	12-month petition finding.
Tehachapi slender salamander	12-month petition finding.
Coqui Llanero	12-month petition finding/ Proposed listing.
Dusky tree vole	12-month petition finding.

ACTIONS FUNDED IN FY 2010 AND FY 2011 BUT NOT YET COMPLETED—Continued

Species	Action
Leatherside chub (from 206 species petition)	12-month petition finding.
Platte River caddisfly (from 206 species petition)[5]	12-month petition finding.
3 Texas moths (*Ursia furtiva*, *Sphingicampa blanchardi*, *Agapema galbina*) (from 475 species petition)	12-month petition finding.
3 South Arizona plants (*Erigeron piscaticus*, *Astragalus hypoxylus*, *Amoreuxia gonzalezii*) (from 475 species petition).	12-month petition finding.
5 Central Texas mussel species (3 from 475 species petition)	12-month petition finding.
14 parrots (foreign species)	12-month petition finding.
Mohave Ground Squirrel[1]	12-month petition finding.
Western gull-billed tern	12-month petition finding.
OK grass pink (*Calopogon oklahomensis*)[1]	12-month petition finding.
Ashy storm-petrel[5]	12-month petition finding.
Honduran emerald	12-month petition finding.
Eagle Lake trout[1]	90-day petition finding.
32 Pacific Northwest mollusks species (snails and slugs)[1]	90-day petition finding.
42 snail species (Nevada & Utah)	90-day petition finding.
Spring Mountains checkerspot butterfly	90-day petition finding.
10 species of Great Basin butterfly	90-day petition finding.
404 Southeast species	90-day petition finding.
Franklin's bumble bee[4]	90-day petition finding.
American eel[4]	90-day petition finding.
Aztec gilia[5]	90-day petition finding.
White-tailed ptarmigan[5]	90-day petition finding.
San Bernardino flying squirrel[5]	90-day petition finding.
Bicknell's thrush[5]	90-day petition finding.
Sonoran talussnail[5]	90-day petition finding.
2 AZ Sky Island plants (*Graptopetalum bartrami* & *Pectis imberbis*)[5]	90-day petition finding.
I'iwi[5]	90-day petition finding.
Humboldt marten	90-day petition finding.
Desert massasauga	90-day petition finding.
Western glacier stonefly (*Zapada glacier*)	90-day petition finding.
Thermophilic ostracod (*Potamocypris hunteri*)	90-day petition finding.
Sierra Nevada red fox[5]	90-day petition finding.
Boreal toad (eastern or southern Rocky Mtn population)[5]	90-day petition finding.
High-Priority Listing Actions	
20 Maui-Nui candidate species[2] (17 plants, 3 tree snails) (14 with LPN = 2, 2 with LPN = 3, 3 with LPN = 8)	Proposed listing.
8 Gulf Coast mussels (southern kidneyshell (LPN = 2), round ebonyshell (LPN = 2), Alabama pearlshell (LPN = 2), southern sandshell (LPN = 5), fuzzy pigtoe (LPN = 5), Choctaw bean (LPN = 5), narrow pigtoe (LPN = 5), and tapered pigtoe (LPN = 11))[4].	Proposed listing.
Umtanum buckwheat (LPN = 2) and white bluffs bladderpod (LPN = 9)[4]	Proposed listing.
Grotto sculpin (LPN = 2)[4]	Proposed listing.
2 Arkansas mussels (Neosho mucket (LPN = 2) & Rabbitsfoot (LPN = 9))[4]	Proposed listing.
Diamond darter (LPN = 2)[4]	Proposed listing.
Gunnison sage-grouse (LPN = 2)[4]	Proposed listing.
Coral Pink Sand Dunes Tiger Beetle (LPN = 2)[5]	Proposed listing.
Lesser prairie chicken (LPN = 2)	Proposed listing.
4 Texas salamanders (Austin blind salamander (LPN = 2), Salado salamander (LPN = 2), Georgetown salamander (LPN = 8), Jollyville Plateau (LPN = 8))[3].	Proposed listing.
5 SW aquatics (Gonzales Spring Snail (LPN = 2), Diamond Y springsnail (LPN = 2), Phantom springsnail (LPN = 2), Phantom Cave snail (LPN = 2), Diminutive amphipod (LPN = 2))[3].	Proposed listing.
2 Texas plants (Texas golden gladecress (*Leavenworthia texana*) (LPN = 2), Neches River rose-mallow (*Hibiscus dasycalyx*) (LPN = 2))[3].	Proposed listing.
4 AZ plants (Acuna cactus (*Echinomastus erectocentrus* var. *acunensis*) (LPN = 3), Fickeisen plains cactus (*Pediocactus peeblesianus fickeiseniae*) (LPN = 3), Lemmon fleabane (*Erigeron lemmonii*) (LPN = 8), Gierisch mallow (*Sphaeralcea gierischii*) (LPN = 2))[5].	Proposed listing.
FL bonneted bat (LPN = 2)[3]	Proposed listing.
3 Southern FL plants (Florida semaphore cactus (*Consolea corallicola*) (LPN = 2), shellmound applecactus (*Harrisia* (=*Cereus*) *aboriginum* (=*gracilis*)) (LPN = 2), Cape Sable thoroughwort (*Chromolaena frustrata*) (LPN = 2))[5].	Proposed listing.
21 Big Island (HI) species[5] (includes 8 candidate species—6 plants & 2 animals; 4 with LPN = 2, 1 with LPN = 3, 1 with LPN = 4, 2 with LPN = 8).	Proposed listing.
12 Puget Sound prairie species (9 subspecies of pocket gopher (*Thomomys mazama* ssp.) (LPN = 3), streaked horned lark (LPN = 3), Taylor's checkerspot (LPN = 3), Mardon skipper (LPN = 8))[3].	Proposed listing.
2 TN River mussels (fluted kidneyshell (LPN = 2), slabside pearlymussel (LPN = 2))[5]	Proposed listing.
Jemez Mountain salamander (LPN = 2)[5]	Proposed listing.

[1] Funds for listing actions for these species were provided in previous FYs.
[2] Although funds for these high-priority listing actions were provided in FY 2008 or 2009, due to the complexity of these actions and competing priorities, these actions are still being developed.
[3] Partially funded with FY 2010 funds and FY 2011 funds.
[4] Funded with FY 2010 funds.
[5] Funded with FY 2011 funds.

We have endeavored to make our listing actions as efficient and timely as possible, given the requirements of the relevant law and regulations, and constraints relating to workload and personnel. We are continually considering ways to streamline processes or achieve economies of scale, such as by batching related actions together. Given our limited budget for implementing section 4 of the Act, these actions described above collectively constitute expeditious progress.

The North Oregon Coast DPS of the red tree vole will be added to the list of candidate species upon publication of this 12-month finding. We will continue to monitor the status of this species as new information becomes available. This review will determine if a change in status is warranted, including the need to make prompt use of emergency listing procedures.

We intend that any proposed listing action for the North Oregon Coast DPS of the red tree vole will be as accurate as possible. Therefore, we will continue to accept additional information and comments from all concerned governmental agencies, the scientific community, industry, or any other interested party concerning this finding.

References Cited

A complete list of all references cited is available on the internet at *http://www.regulations.gov* and on request from the Oregon Fish and Wildlife Office (see **ADDRESSES**).

Authors

The primary authors of this document are the staff members of the Oregon Fish and Wildlife Office.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 19, 2011.

Daniel M. Ashe,

Director, Fish and Wildlife Service.

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Part III

Department of Energy

10 CFR Part 1021
National Environmental Policy Act Implementing Procedures; Final Rule

DEPARTMENT OF ENERGY

[Docket ID: DOE–HQ–2010–0002]

10 CFR Part 1021

RIN 1990–AA34

National Environmental Policy Act Implementing Procedures

AGENCY: Office of the General Counsel, U.S. Department of Energy.

ACTION: Final rule.

SUMMARY: The U.S. Department of Energy (DOE or the Department) is revising its National Environmental Policy Act (NEPA) Implementing Procedures. The majority of the changes are being made to the categorical exclusion provisions. These revisions are intended to better align the Department's regulations, particularly its categorical exclusions, with DOE's current activities and recent experiences, and to update the provisions with respect to current technologies and regulatory requirements. DOE is establishing 20 new categorical exclusions and removing two categorical exclusion categories, one environmental assessment category, and three environmental impact statement categories. Other changes modify and clarify DOE's existing provisions.

DATES: *Effective Date:* These rule changes will become effective November 14, 2011.

FOR FURTHER INFORMATION CONTACT: For information regarding DOE's NEPA implementation regulations or general information about DOE's NEPA procedures, contact Ms. Carol Borgstrom, Director, Office of NEPA Policy and Compliance, at *askNEPA@hq.doe.gov* or 202–586–4600 or leave a message at 800–472–2756.

SUPPLEMENTARY INFORMATION:

I. Background

DOE promulgated its regulations entitled "National Environmental Policy Act Implementing Procedures" (10 CFR part 1021) on April 24, 1992 (57 FR 15122), and revised these regulations on July 9, 1996 (61 FR 36222), December 6, 1996 (61 FR 64603), and August 27, 2003 (68 FR 51429). The DOE NEPA regulations at 10 CFR part 1021 contain procedures that DOE shall use to comply with section 102(2) of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4332(2)) and the Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508). DOE published a Notice of Proposed Rulemaking on January 3, 2011 (76 FR 214), to solicit public comments on its proposal to further revise these regulations by adding new categorical exclusions, revising existing categorical exclusions, and making certain other changes.

Publication of the Notice of Proposed Rulemaking began a 45-day public comment period, scheduled to end on February 17, 2011, which included a public hearing on February 4, 2011, at DOE headquarters in Washington, DC. On February 23, 2011, in response to a request from the National Wildlife Federation, on behalf of itself and 9 other organizations, for additional time to review the proposed rule and submit comments, DOE re-opened the comment period until March 7, 2011 (76 FR 9981).

DOE received comments from private citizens, trade associations, nongovernmental organizations, Federal agencies, and a tribal government agency. The transcript of the public hearing, a request to extend the comment period, and the 29 comment documents received by DOE, including two documents received after the close of the comment period, are available on the DOE NEPA Web site (*http://energy.gov/nepa*) and on the Regulations.gov Web site (*http://www.regulations.gov*) at docket ID: DOE–HQ–2010–0002.

DOE considered all comments received, including those comments on categorical exclusions for which DOE did not propose any changes. DOE's response to the comments is contained in section IV, Comments Received and DOE's Responses, below.

The revisions DOE is making are consistent with guidance issued by CEQ on establishing, applying, and revising categorical exclusions under NEPA (CEQ, "Final Guidance for Federal Departments and Agencies on Establishing, Applying, and Revising Categorical Exclusions Under the National Environmental Policy Act"; hereafter, CEQ Categorical Exclusion Guidance) (75 FR 75628; December 6, 2010). On December 29, 2009, DOE initiated its periodic review by publishing a Request for Information in the **Federal Register** (74 FR 68720) (*http://www.gpo.gov/fdsys/pkg/FR-2009-12-29/pdf/E9-30829.pdf*) that sought input from interested parties to help identify activities that should be considered for new or revised categorical exclusions. Moreover, DOE evaluated each of its existing categorical exclusions in preparing these revisions, and this rulemaking satisfies CEQ's recommendation for periodic review of an agency's categorical exclusions.

This document adopts the revisions proposed in the Notice of Proposed Rulemaking, with certain changes discussed below, and amends DOE's existing regulations at 10 CFR part 1021. In accordance with 40 CFR 1507.3, CEQ reviewed this final rule and concluded that the proposed amendment of DOE's NEPA implementing regulations is in conformance with NEPA and the CEQ regulations. The Secretary of Energy has approved this final rule for publication.

Within this document, "existing rule" refers to DOE's current NEPA implementing regulations (as last modified in 2003, before the revisions announced in this document); "proposed rule" refers to changes identified in DOE's Notice of Proposed Rulemaking published on January 3, 2011; and "new rule" or "final rule" refers to the changes identified in this document, which will become effective on November 14, 2011.

II. Statement of Purpose

The Department last revised the categorical exclusions in its NEPA implementing regulations in 1996. Since that time, the range of activities in which DOE is involved has changed and expanded. For example, in recent years, DOE has reviewed thousands of applications from private entities requesting financial support for projects to develop new or improved energy technologies, including for renewable energy sources. This experience highlighted the potential for new and revised categorical exclusions and helped DOE identify appropriate limits to include in these categorical exclusions to ensure that the activities described normally would not have the potential for significant environmental impact.

The purpose of this rulemaking is to revise certain provisions of DOE's NEPA implementing regulations to better align DOE's categorical exclusions with its current activities and its experience and to bring the provisions up-to-date with current technology, operational practices, and regulatory requirements. The changes will facilitate compliance with NEPA by providing for more efficient review of actions (for example, helping the Department meet the goals set forth in the Energy Policy Act of 2005), and allowing the Department to focus its resources on evaluating proposed actions that have the potential for significant environmental impacts. The changes will also increase transparency by providing the public more specific information as to the circumstances in which DOE is likely to invoke a categorical exclusion.

What kinds of changes is DOE making?

DOE is amending 10 CFR part 1021, subparts B, C, and D. Most of the changes affect the categorical exclusion provisions at 10 CFR part 1021, subpart D, appendices A and B.

DOE is adding 20 new categorical exclusions. These categorical exclusions address stormwater runoff control; lead-based paint containment, removal, and disposal; drop-off, collection, and transfer facilities for recyclable material; determinations of excess real property; small-scale educational facilities; small-scale indoor research and development projects using nanoscale materials; research activities in aquatic environments; experimental wells for injection of small quantities of carbon dioxide; combined heat and power or cogeneration systems; small-scale renewable energy research and development and pilot projects; solar photovoltaic systems; solar thermal systems; wind turbines; ground source heat pumps; biomass power plants; methane gas recovery and utilization systems; alternative fuel vehicle fueling stations; electric vehicle charging stations; drop-in hydroelectric systems; and small-scale renewable energy research and development and pilot projects in aquatic environments. These new categorical exclusions include criteria (*e.g.*, acreage, location, and height limitations), based on DOE and other agency experience and regulatory requirements, that limit the covered actions to those that normally would not have the potential to cause significant impacts. DOE is removing two categorical exclusion categories, one environmental assessment category, and three environmental impact statement categories.

DOE also is modifying many of the existing categorical exclusions. These revisions include substantive changes, changes to update regulatory or statutory references and requirements, and editorial changes. By "substantive" changes, DOE means a change that is more than a clarifying or consistency change; this term includes changes that alter the scope or meaning of a provision or that result in the addition or deletion of a provision.

DOE is making several minor technical and organizational changes in the final rule, four of which were not identified at the time of the Notice of Proposed Rulemaking. First, after issuing the Notice of Proposed Rulemaking, DOE noted that 10 CFR 1021.215(d) includes an outdated reference to § 1021.312. In the DOE NEPA regulations promulgated in 1992, § 1021.312 addressed environmental impact statement implementation plans. In 1996, DOE removed this requirement, and the section number was reserved. Therefore, DOE is deleting the reference to § 1021.312 from § 1021.215. Second, in the Notice of Proposed Rulemaking, DOE proposed two changes to correct cross-references within § 1021.311. After further consideration, DOE is modifying the proposed change to § 1021.311(d) to improve clarity by deleting the introductory clause, rather than only correcting the cross-reference in that clause. (As described in the Notice of Proposed Rulemaking, DOE is also revising § 1021.311(f) (*i.e.*, correcting one cross-reference).) Third, in the Notice of Proposed Rulemaking, DOE proposed to change the title for the group of categorical exclusions from B4.1 through B4.13. After further consideration, DOE is further modifying the title to "Categorical Exclusions Applicable to Electric Power and Transmission." Fourth, a comment from Tri-Valley CAREs (at page 1) requested that DOE not remove the table of contents from its NEPA regulations (as proposed in the Notice of Proposed Rulemaking), explaining that the table of contents is "extremely useful." In response, DOE is retaining a table of contents in each appendix. These changes have no regulatory effect.

III. Overview of Categorical Exclusions

What is a categorical exclusion?

A categorical exclusion is a category (class) of actions that a Federal agency has determined normally do not, individually or cumulatively, have a significant impact on the human environment and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. See 40 CFR 1508.4. A categorical exclusion determination is made when an agency finds that a particular proposed action fits within a categorical exclusion and meets other applicable requirements, including the absence of extraordinary circumstances (*i.e.*, circumstances in which a normally excluded action may have a significant environmental effect).

DOE establishes categorical exclusions pursuant to a rulemaking, such as this one, for defined classes of actions that the Department determines are supported by a record showing that they normally will not have significant environmental impacts, individually or cumulatively. This record is based on DOE's experience, the experience of other agencies, completed environmental reviews, professional and expert opinion, and scientific analyses. DOE also considers public comment received during the rulemaking, as detailed in section IV, Comments Received and DOE's Responses, below.

As CEQ states in its Categorical Exclusion Guidance, "Categorical exclusions are not exemptions or waivers of NEPA review; they are simply one type of NEPA review * * *. Once established, categorical exclusions provide an efficient tool to complete the NEPA environmental review process for proposals that normally do not require more resource-intensive EAs [environmental assessments] or EISs [environmental impact statements]. The use of categorical exclusions can reduce paperwork and delay, so that EAs or EISs are targeted toward proposed actions that truly have the potential to cause significant environmental effects" (75 FR at 75631).

How does DOE use a categorical exclusion in its decisionmaking?

As part of its environmental review responsibilities under NEPA, a DOE NEPA Compliance Officer examines an individual proposed action to determine whether it qualifies for a categorical exclusion. DOE's process is consistent with that described in CEQ's Categorical Exclusion Guidance: "When determining whether to use a categorical exclusion for a proposed activity, a Federal agency must carefully review the description of the proposed action to ensure that it fits within the category of actions described in the categorical exclusion. Next, the agency must consider the specific circumstances associated with the proposed activity, to rule out any extraordinary circumstances that might give rise to significant environmental effects requiring further analysis and documentation" in an environmental assessment or environmental impact statement (75 FR at 75631).

DOE's existing and new regulations ensure that the NEPA Compliance Officer follows the steps described by CEQ. Before DOE may apply a categorical exclusion to a particular proposed action, DOE must determine in accordance with 10 CFR 1021.410(b) that: (1) The proposed action fits within an established categorical exclusion as listed in appendix A or B to subpart D, (2) there are no extraordinary circumstances related to the proposal that may affect the significance of the environmental impacts of the proposed action, and (3) the proposal is not "connected" to other actions with potentially significant impacts and is not related to other actions with cumulatively significant impacts, and the proposed action is not precluded as

an impermissible interim action pursuant to 40 CFR 1506.1 and 10 CFR 1021.211.

To fit within a categorical exclusion listed in appendix B, a proposed action also must satisfy certain conditions known as "integral elements" (appendix B, paragraphs (1) through (5)). Briefly, these conditions require that a categorical exclusion listed in appendix B not be applied to a proposed action with the potential to cause significant environmental impacts due to, for example, threatening a violation of applicable environmental, safety, and health requirements; requiring siting and construction, or major expansion, of a new waste storage, disposal, recovery, or treatment facility; disturbing hazardous substances such that there would be uncontrolled or unpermitted releases; having the potential to cause significant impacts on environmentally sensitive resources; or involving genetically engineered organisms, unless the proposed activity would be contained in a manner to prevent unauthorized release into the environment and conducted in accordance with applicable requirements.

The level of detail necessary to evaluate the potential for extraordinary circumstances and otherwise to determine whether a categorical exclusion is appropriate for a particular proposed action varies. For example, appendix A to subpart D lists categorical exclusions for several routine administrative actions, studies, and planning activities. A NEPA Compliance Officer normally can determine whether a categorical exclusion listed in appendix A is appropriate by reviewing a description of the proposed project. However, to determine whether a categorical exclusion from appendix B applies, in addition to the project description, a NEPA Compliance Officer also would consider information about a proposed project site and the result of reviews by other agencies (such as of historic properties or threatened and endangered species), as well as other related information.

IV. Comments Received and DOE's Responses

DOE has considered the comments on the proposed rulemaking received during the public comment period as well as all late comments. DOE has incorporated some revisions suggested in these comments into the final rule. The following discussion describes the comments received, provides DOE's response to the comments, and describes changes to the rule resulting from public comments and from DOE's further consideration of its proposal. DOE does not repeat discussion of topics in this final rule that have not changed relative to what was described in the Notice of Proposed Rulemaking. Thus, the Notice of Proposed Rulemaking may be consulted for further explanation regarding changes in the final rule.

DOE received no comments or only supportive comments on the following sections of the rule and is not making any changes beyond those discussed in the Notice of Proposed Rulemaking: In subpart C, sections 1021.322 and 1021.331; in subpart D, sections 1021.400; all of appendix A; in appendix B, paragraphs (1) through (2), and categorical exclusions B1.1, B1.2, B1.4, B1.6 through B1.8, B1.10, B1.12, B1.13, B1.15 through B1.17, B1.20 through B1.23, B1.27, B1.28, B1.30 through B1.32, B1.35, B1.36, B2.1, B2.2, B2.4 through B2.6, B3.2 through B3.5, B3.10, B3.13, B4.2, B4.3, B4.5, B4.8, B5.1, B5.2, B5.6, B5.7, B5.9 through B5.12, B5.14, B5.21 through B5.23, B6.2 through B6.10, B7.1, B7.2; in appendix C, C1 through C3, C5, C6, C9 through C11, C13, C14, C16; and in appendix D, D2 through D6, D8 through D12. In the final rule, therefore, these sections remain as discussed in the Notice of Proposed Rulemaking and are not discussed further. In addition, this final rule does not further discuss editorial changes described in the Notice of Proposed Rulemaking or in section II, Statement of Purpose, above.

A. General Comments on Proposed Amendments

The U.S. Environmental Protection Agency stated that the "proposed changes will enhance the efficiency of DOE's environmental review process while maintaining appropriate consideration of environmental effects pursuant to NEPA" and, accordingly, did not object to the proposed rulemaking.

In addition, several comments expressed support for the establishment of particular new categorical exclusions, especially for renewable energy technologies. DOE received comments expressing support for the following categorical exclusions as proposed: B1.7 (electronic equipment) from Edison Electric Institute (at page 2); B3.9 (projects to reduce emissions and waste generation) from Edison Electric Institute (at page 2) and National Wildlife Federation (at page 1); B3.16 (research activities in aquatic environments) from Biotechnology Industry Organization (at page 3) and Pacific Northwest National Laboratory, a DOE government research laboratory (at page 1); B5.13 (experimental wells for injection of small quantities of carbon dioxide) from Pacific Northwest National Laboratory (at page 1); B5.14 (combined heat and power or cogeneration systems) from Pacific Northwest National Laboratory (at page 1); B5.15 (small-scale renewable energy research and development and pilot projects) from Biotechnology Industry Organization (at page 3), Defenders of Wildlife (at page 2), and Pacific Northwest National Laboratory (at page 1); B5.16 (solar photovoltaic systems) from Pacific Northwest National Laboratory (at page 1); B5.17 (solar thermal systems) from Pacific Northwest National Laboratory (at page 1); B5.18 (wind turbines) from Granite Construction Company (at page 2) and Pacific Northwest National Laboratory (at page 1); B5.19 (ground source heat pumps) from Pacific Northwest National Laboratory (at page 1); B5.20 (biomass power plants) from Pacific Northwest National Laboratory (at page 1); B5.21 (methane gas recovery and utilization systems) from Pacific Northwest National Laboratory (at page 1); B5.22 (alternative fuel vehicle fueling stations) from Pacific Northwest National Laboratory (at page 1); B5.23 (electric vehicle charging stations) from National Electrical Manufacturers Association (at page 1), National Wildlife Federation (at page 1), and Pacific Northwest National Laboratory (at page 1); B5.24 (drop-in hydroelectric systems) from Pacific Northwest National Laboratory (at page 1); and B5.25 (small-scale renewable energy research and development and pilot projects in aquatic environments) from Biotechnology Industry Organization (at page 3), Ocean Renewable Power Company (at page 1), and Pacific Northwest National Laboratory (at page 1). DOE received a comment from the Biotechnology Industry Organization (at pages 1 and 3) in support of the use of algal biomass for renewable energy production, stating that the existing regulatory framework was sufficient to protect human health and the environment. The comment supported the use of categorical exclusions for related small-scale and laboratory research and pilot projects. Finally, DOE received a comment from the Blue Ridge Environmental Defense League (at page 1) indicating general support for solar photovoltaic and solar thermal facilities and wind turbines, but cautioned that the public may see categorical exclusions as loopholes, which could undermine support for these technologies. DOE notes these comments. Section 1021.410 describes

the process for applying a categorical exclusion.

Several comments expressed general objections to or concerns regarding DOE's proposed revision of its NEPA regulations. A comment from an anonymous individual (at pages 1–2) rejected all proposed changes, and a comment from the Blue Ridge Environmental Defense League (at page 1) opposed the addition of any categorical exclusions. DOE notes these comments. A comment from Jean Public (at page 1) listed wildlife, birds, reptiles, and mammals as environmental resources to be protected and stated that environmental assessments should never be allowed or used. DOE responds that DOE's NEPA regulations provide for the consideration of potential impacts on environmentally sensitive resources, and the provisions relating to environmental assessments are consistent with NEPA and the requirements of the CEQ NEPA regulations. A comment from Joyce Dillard (at page 1) stated that public health and safety should be a consideration first and foremost; DOE notes that public health and safety are among the key considerations in all NEPA reviews, including the establishment and application of categorical exclusions.

DOE received a comment from the Chesapeake Bay Foundation (at page 2) asking that DOE provide "a clear explanation and evidential support," in accordance with the CEQ Categorical Exclusion Guidance, when proposing categorical exclusions. DOE establishes categorical exclusions based on Departmental experience, the experience of other agencies, completed environmental reviews, professional and expert opinion, and scientific analyses. For example, some of DOE's proposed categorical exclusions are supported by existing comparable categorical exclusions from other Federal agencies and their related experience. DOE prepared a Technical Support Document to provide analysis and identify reference documents supporting the revisions described in the Notice of Proposed Rulemaking. In preparation of this final rule, DOE updated and expanded the Technical Support Document. The Technical Support Document is available at *http://energy.gov/nepa/downloads/technical-support-document-supplement-department-energys-notice-final-rulemaking.*

A comment from the Biotechnology Industry Organization (at page 2) expressed support for science-based regulation that "focuses on reducing and eliminating actual risks to the natural and human environment" and applauded DOE's goals of removing barriers toward the adoption of innovative research on renewable energy.

A comment from the Kaibab Band of Paiute Indians (at page 1), citing the April 2010 Gulf oil spill, expressed opposition to the use of categorical exclusion determinations for experimental and research and development projects because of their unpredictability, and recommended that DOE analyze experimental or unproven techniques in environmental assessments or environmental impact statements. The comment recommends a similar approach for proven techniques employed in extreme situations. In response to this and other comments related to research and development activities, DOE reviewed its categorical exclusions and revised some of the listed actions and associated limits, such as described for categorical exclusions below. Limits on the size, scope, and other aspects (such as containment), combined with other criteria, restrict the application of categorical exclusions for research and development activities to projects that normally would not have a potential for significant environmental impacts. For proposed projects involving proven techniques in extreme situations, DOE would evaluate whether extraordinary circumstances are present such that application of a categorical exclusion is not appropriate.

DOE received a comment from Brian Musser (at page 2) regarding the regulation of coal combustion residue under Resource Conservation and Recovery Act Subtitle C. DOE considers this comment to be out of scope because it does not relate to the DOE NEPA regulations. However, DOE would consider potential impacts associated with coal combustion residue where relevant to NEPA review of a specific proposal.

B. Comments on DOE's NEPA Process

A comment from the Ocean Renewable Power Company (at pages 1–2), referring to a pilot project for which DOE provides funding and another agency has licensing authority, stated that the NEPA process involves duplicative and unnecessary reviews by multiple agencies, which increases costs for both the agencies and the applicant and imposes delays that can jeopardize private financing. This comment does not propose specific changes to DOE's NEPA regulations, but suggests that coordination with other environmental review requirements could be improved. DOE's NEPA regulations state, in § 1021.341, that "DOE shall integrate the NEPA process and coordinate NEPA compliance with other environmental review requirements to the fullest extent possible." DOE appreciates the concern expressed by the comment and will continue to seek ways to improve coordination of environmental review requirements.

A comment from the Chesapeake Bay Foundation (at page 2) supported the recommendation in the CEQ Categorical Exclusion Guidance that an agency such as DOE develop a schedule for the periodic review of its categorical exclusions at least every 7 years. DOE also agrees with the recommendation for periodic review and considers this rulemaking to satisfy the CEQ recommendation for the near term. DOE intends to review its categorical exclusions periodically, consistent with CEQ guidance, to ensure that DOE's categorical exclusions "remain current and appropriate," as stated in the CEQ guidance.

C. Comments on Amendments to Subpart D

1. Placement of Categorical Exclusions in Appendix A vs. Appendix B

A comment from Pacific Northwest National Laboratory (at page 3) asked DOE to evaluate moving several categorical exclusions from appendix B, for which determinations are documented and made publicly available, to appendix A, for which determinations are not required to be documented. For example, the comment stated that requiring documentation for routine maintenance (categorical exclusion B1.3) that is performed many times daily is an inefficient use of resources and results in gaps in compliance. DOE decided not to move any categorical exclusion from appendix B to appendix A because such a change would reduce transparency in the Department's NEPA compliance program. To address the potential inefficiency identified by the comment, DOE is adding a new paragraph (10 CFR 1021.410(f)) to the final rule that describes current practice to address proposed recurring activities to be undertaken during a specified time period, such as routine maintenance activities for a year, in a single categorical exclusion determination after considering the potential aggregated impacts.

Another comment from Sandy Beranich (at page 1) stated that many categorical exclusions in appendix A are for routine activities, and NEPA should not be required for routine activities. The comment stated that, if some level

of scale is not provided to indicate when an appendix A review is triggered, then DOE should post such appendix A categorical exclusion determinations online to inform the public how DOE uses its resources. DOE responds that the application of categorical exclusions listed in appendix A normally is a simple matter that entails minimal cost. DOE has not found use of these categorical exclusions to be problematic and has not identified any need to establish a level of activity below which NEPA normally would not apply. Some DOE offices choose to post to the Web their determinations for categorical exclusions listed in appendix A, but DOE does not require this practice.

A comment from Sandy Beranich (at page 3) stated that NEPA "is all about ground-disturbing actions—not routine activities." DOE disagrees that NEPA is limited to ground-disturbing activities (for example, activities could also have air or water impacts that would be appropriate for NEPA review), and is not making any change in response to this comment.

Another comment from Sandy Beranich (at page 3) provided an example of a proposed action, the components of which, in her opinion, fell within six different appendix A and appendix B categorical exclusions. DOE agrees that it is possible for a project to be covered by more than one categorical exclusion. Furthermore, as stated in DOE's NEPA regulations (10 CFR 1021.410(d)), a class of actions includes activities foreseeably necessary to proposals encompassed within the class of actions (such as associated transportation activities and award of implementing grants and contracts). Where an action might fit within multiple categorical exclusions, a NEPA Compliance Officer should use the categorical exclusion(s) that best fits the proposed action.

2. Previously Disturbed or Developed Area

DOE received comments (*e.g.*, from Chesapeake Bay Foundation (at page 4), Defenders of Wildlife (at page 2), and National Wildlife Federation (at pages 1, 4–5)) on the use of the phrase "previously disturbed or developed," which appears in several categorical exclusions. In the Notice of Proposed Rulemaking, DOE explained that the phrase referred to "land that has been changed such that the former state of the area and its functioning ecological processes have been altered." Comments (*e.g.*, from Defenders of Wildlife (at page 2), National Wildlife Federation (at page 5)) expressed concern that the phrase was too vague to provide a useful limit and suggested, for example, including in the condition a requirement for the existence of infrastructure; further clarification is necessary, comments said. A comment from Sandy Beranich (at page 3) pointed out that land disturbed or developed in the past could, if abandoned, have reverted to a natural state and, therefore, suggested that "previously disturbed or developed" should be bounded by a timeframe. Comments (*e.g.*, from Defenders of Wildlife (at page 2) and National Wildlife Federation (at page 4)) also suggested that DOE mention the many brownfield, Superfund, and abandoned mine locations that have been identified through the Environmental Protection Agency's Repowering America Program, in partnership with DOE. In response, DOE clarifies that the phrase "previously disturbed or developed" refers to land that has been changed such that its functioning ecological processes have been and remain altered by human activity. The phrase encompasses areas that have been transformed from natural cover to non-native species or a managed state, including, but not limited to, utility and electric power transmission corridors and rights-of-way, and other areas where active utilities and currently used roads are readily available. This clarification applies to all uses of the phrase "previously disturbed or developed." This clarification has been added to § 1021.410(g).

In addition, DOE notes that two definitions offered in a public comment may help readers understand the meaning of previously disturbed and developed. A comment from the Chesapeake Bay Foundation (at page 4) suggested that "previously disturbed" should refer to land that has largely been transformed from natural cover to a managed state and that has remained in that managed state (rather than reverted back to largely natural cover). The comment (at page 4) also suggested that "developed area" should refer to land that is largely covered by man-made land uses and activities (residential, commercial, institutional, industrial, and transportation).

A few comments (*e.g.*, from the Chesapeake Bay Foundation (at page 4) and Defenders of Wildlife (at page 2)) pointed out that the interpretation of the phrase depends on the context, and that, in some contexts, there is a potential for significant impacts when a particular action is taken, even if it occurs in a disturbed area. Although DOE agrees with this possibility, the potential for such impacts would be unlikely and would constitute an "extraordinary circumstance," where application of a categorical exclusion would be inappropriate. Before applying a categorical exclusion, a NEPA Compliance Officer will evaluate the context of the proposed action to determine whether it complies with the integral elements of the categorical exclusion (listed in appendix B, paragraphs (1) through (5)) and whether there are any associated extraordinary circumstances that would affect the significance of impacts.

3. Small or Small-Scale

Several comments (*e.g.*, DOI (at page 3), Ocean Renewable Energy Coalition (at page 2)) asserted that DOE's use of "small" and "small-scale" was too vague to adequately define the scope of classes of actions and asked DOE to more narrowly define or clarify its use of these terms. Comments (*e.g.*, Chesapeake Bay Foundation (at page 5), Defenders of Wildlife (at page 4), Sandy Beranich (at page 2)) requested that DOE add a physical limitation such as acreage or a megawatt limitation or number of turbines (in categorical exclusion B5.18) to further define "small" or "small-scale." A comment from the Chesapeake Bay Foundation (at page 5) asked DOE to impose a 5-acre or smaller limit for small-scale educational facilities in categorical exclusion B3.14 and expressed concern regarding the potential size (footprint) of a facility for nanoscale research in categorical exclusion B3.15. A comment from the Chesapeake Bay Foundation (at page 3) noted that determining what is a small size is influenced by the location of a proposed action on the landscape. In response, DOE provides a general discussion of "small" and "small-scale" below and also discusses the use of these terms in the context of specific classes of actions (B1.26, B1.29, B3.14, B3.15, B5.18, B5.25, B6.1, C8 (distinguishing small scale and large scale)) later in this preamble.

In determining whether a particular proposed action qualifies for a categorical exclusion, DOE considers terms such as "small" and "small-scale" in the context of the particular proposal, including its proposed location. In assessing whether a proposed action is small, in addition to the actual magnitude of the proposal, DOE considers factors such as industry norms, the relationship of the proposed action to similar types of development in the vicinity of the proposed action, and expected outputs of emissions or waste. When considering the physical size of a proposed facility, for example, a DOE NEPA Compliance Officer would review the surrounding land uses, the

scale of the proposed facility relative to existing development, and the capacity of existing roads and other infrastructure to support the proposed action. This clarification has been added to § 1021.410(g).

DOE has reviewed the proposed categorical exclusions and classes of action on a case-by-case basis to further consider size or scale issues in response to comments received on the Notice of Proposed Rulemaking. Among other factors, DOE considered that these terms appear in its existing categorical exclusions and have been applied by NEPA Compliance Officers for more than 15 years. As a result of this review, DOE concludes that the terms "small" and "small-scale" remain appropriate for describing the types of activities contemplated by categorical exclusions. The provisions of the individual categorical exclusions using these terms, together with the integral elements at appendix B, paragraphs (1) through (5), the general restrictions on the application of categorical exclusions at 10 CFR 1021.410, and extraordinary circumstances, provide the necessary safeguards to ensure that categorical exclusions are not applied to activities that could result in significant environmental impacts. Therefore, DOE is retaining its proposed use of "small" and "small-scale" in its final rule.

4. Would Not Have the Potential To Cause Significant Impacts

DOE received comments (*e.g.*, from Columbia Riverkeeper (at page 6), National Wildlife Federation (at page 3)) on its proposed use of the phrase "would not have the potential for significant impact" in both the integral element provision (at appendix B, paragraph (4)) of appendix B categorical exclusions and a number of specific categorical exclusions (categorical exclusions B1.11, B1.18, B1.24, B2.3, and B5.18). In response to these comments, DOE reviewed each use of the phrase in the Notice of Proposed Rulemaking. After further consideration, DOE is revising related text in several categorical exclusions. See discussion of categorical exclusions B1.5, B1.11, B3.1, B3.8, and B4.6 below. DOE is continuing to use the phrase in other categorical exclusions and related text.

A comment from Tri-Valley CAREs (at pages 2–3) expressed concern that DOE was expanding the categorical exclusions "without providing an analysis of whether there was actually a potential for significant environmental impact." A comment from Sandy Beranich (at page 1) stated that use of "significant" would leave the degree of impact open to interpretation, whereas, the use of "adversely affect" was clearer. DOE's support for its categorical exclusions is provided in this preamble and in the Technical Support Document. For a description of how DOE creates and applies its categorical exclusions, please see Section III above.

To understand why DOE is changing some conditions in categorical exclusions that previously used the phrase "not adversely affect" or that required no change in a particular parameter, it is helpful to understand that it was never DOE's intent or practice that identification of any adverse impact or change whatsoever—no matter how small—would disqualify the use of a categorical exclusion for a particular proposed project. Also, the changes are consistent with the purpose of categorical exclusions, which is to define a set of activities that normally pose no potential for significant environmental impacts, and with the CEQ NEPA regulations and its Categorical Exclusion Guidance.

One change DOE is making, for example, is in the integral elements applicable to all categorical exclusions in appendix B. The existing regulation states that a proposed action "must not adversely affect environmentally sensitive resources." DOE is changing this to state that a proposed action must not "have the potential to cause significant impacts on environmentally sensitive resources." This is consistent with the CEQ Categorical Exclusion Guidance, which states that an agency may define its extraordinary circumstances "so that a particular situation, such as the presence of a protected resource, is not considered an extraordinary circumstance per se, but a factor to consider when determining if there are extraordinary circumstances, such as a significant impact to that resource."

In the case of individual categorical exclusions, use of the term "significant" helps to highlight a type of potential impact that a NEPA Compliance Officer must consider when reviewing a particular proposed action. This is consistent with the CEQ Categorical Exclusion Guidance, which suggests that it may be useful for agencies to "identify additional extraordinary circumstances and consider the appropriate documentation when using certain categorical exclusions."

5. Definition of "State"

DOE uses the phrase "Federal, state, or local government" (and similar phrases) in 10 CFR part 1021. Unless otherwise specified, the term "state" refers broadly to any of the states that comprise the United States, any territory or possession of the United States (such as Puerto Rico, Guam, and American Samoa), and the District of Columbia. This definition is a clarification of, not a change in, DOE practice because DOE always has applied, and continues to apply, this meaning to the word "state" in 10 CFR part 1021.

6. Comments on Section 1021.410

Comments (*e.g.*, from Tri-Valley CAREs (at pages 2–4)) asked how DOE would meet the CEQ requirement that an agency's categorical exclusion procedures "provide for extraordinary circumstances in which a normally [categorically] excluded action may have a significant environmental effect" (40 CFR 1508.4). DOE's regulations require that, before a categorical exclusion may be applied to a proposed action, a determination must be made that there are no extraordinary circumstances related to a proposal that may affect the significance of the proposal's environmental effects (10 CFR 1021.410(b)(2)). In the final rule, DOE describes extraordinary circumstances as "unique situations presented by specific proposals, including, but not limited to, scientific controversy about the environmental effects of the proposal; uncertain effects or effects involving unique or unknown risks; and unresolved conflicts concerning alternative uses of available resources" (10 CFR 1021.410(b)(2)). If DOE identifies an extraordinary circumstance that would result in a potentially significant impact, then it would not apply a categorical exclusion to that proposed action. Further, under DOE's NEPA regulations, before a categorical exclusion from appendix B of subpart D may be applied, DOE must determine that the proposed action satisfies all of the conditions known as "integral elements" (appendix B, paragraphs (1) through (5)). These conditions ensure that a categorical exclusion is not applied to any proposed action that would have the potential to cause significant environmental impacts due to, for example, a threatened violation of applicable environmental, safety, and health requirements, or by disturbing hazardous substances such that there would be uncontrolled or unpermitted releases. Together, DOE's extraordinary circumstances and integral elements provisions require the Department to consider whether there are conditions surrounding a proposal that may affect the significance of the proposal's environmental effects.

Another comment (from Columbia Riverkeeper (at page 5)) expressed concern that DOE's extraordinary

circumstances are not consistent with CEQ guidance and asserted that DOE's examples of extraordinary circumstances set a "higher bar" than CEQ's examples. The comment suggested that, to be consistent with CEQ guidance, DOE's extraordinary circumstances be based on the "presence of an endangered or threatened species or a historic resource." DOE based its approach to extraordinary circumstances on the definitions of categorical exclusion and significance in the CEQ regulations. See 40 CFR 1508.4 and 1508.27. DOE finds its approach to be consistent with the CEQ Categorical Exclusion Guidance, which states (II.C), "An extraordinary circumstance requires the agency to determine how to proceed with the NEPA review. For example, the presence of a factor, such as a threatened or endangered species or a historic resource, could be an extraordinary circumstance, which, depending on the structure of the agency's NEPA implementing procedures, could either cause the agency to prepare an EA or an EIS, or cause the agency to consider whether the proposed action's impacts on that factor require additional analysis in an EA or an EIS. In other situations, the extraordinary circumstance could be defined to include both the presence of the factor and the impact on that factor. Either way, agency NEPA implementing procedures should clearly describe the manner in which an agency applies extraordinary circumstances and the circumstances under which additional analysis in an EA or an EIS is warranted" (75 FR at 75633). Under DOE's categorical exclusion process, therefore, it is an action's potential for significant impacts, for example, on a sensitive resource, and not simply the presence of a sensitive resource, that is the basis for determining the need for an environmental assessment or environmental impact statement. It is the responsibility of the DOE NEPA Compliance Officer to consider this potential for significant impacts and to consult with other agencies as necessary when considering a proposed action. This is expressly addressed in an integral element at appendix B, paragraph (4).

DOE received a comment from Columbia Riverkeeper (at page 4) referring to CEQ's guidance that agencies: Consider cumulative effects; define physical, temporal, and environmental factors that would constrain the use of a categorical exclusion; and consider extraordinary circumstances. The comment cited the CEQ provisions, but did not recommend any particular change to DOE's regulations. DOE considered each of the cited issues in formulating its rule, and the rule is consistent with the CEQ Categorical Exclusion Guidance. Further, DOE consulted with CEQ throughout the rulemaking process in accordance with 40 CFR 1507.3.

DOE is codifying at 10 CFR 1021.410(e) its policy to document and post online appendix B categorical exclusion determinations. As stated in the Notice of Proposed Rulemaking, such postings will not include information that DOE would not disclose pursuant to the Freedom of Information Act (FOIA). A comment from Tri-Valley CAREs (at page 2) expressed concern that the public would be deprived of a right to challenge such withholdings under FOIA. Further, the comment asked DOE to explain the process by which the public can challenge potentially improper withholdings related to an online posting of a categorical exclusion determination. DOE is committed to openness, as is evidenced by its decision to post appendix B categorical exclusion determinations online. The procedures for requesting information related to a categorical exclusion determination are the same as for any other DOE document. If applicable, DOE will apply FOIA exemptions to a categorical exclusion determination—as it would with any document—to appropriately limit the release of particular types of information (*e.g.*, classified or confidential business information). To the fullest extent possible, DOE will segregate information that is exempt from release under FOIA to allow public review of the remainder of the document. See 10 CFR 1021.340. For further information on FOIA processes at DOE, see DOE's FOIA resources posted at *http://energy.gov/management/office-management/operational-management/freedom-information-act,* including a handbook on procedures for filing a request at *http://energy.gov/sites/prod/files/maprod/documents/Handbook.pdf.*

The addition of paragraphs (f) and (g) to 10 CFR 1021.410 is discussed in section IV.C.1–3, above.

7. Integral Elements

Federally Recognized Indian Tribe

In its Notice of Proposed Rulemaking, DOE proposed adding "Federally recognized Indian tribe" to its list of entities that designate property as historically, archeologically, or architecturally significant in appendix B, paragraph (4)(i). In addition, in the final rule, to be consistent with the Advisory Council on Historic Preservation implementing regulations (36 CFR part 800) for the National Historic Preservation Act, DOE has added "Native Hawaiian organization" to the list of entities that may designate such properties. The Advisory Council on Historic Preservation regulations provide consultative roles to both Indian tribes and Native Hawaiian organizations in the Section 106 process under the National Historic Preservation Act. The Advisory Council's regulations define a Native Hawaiian organization as "any organization which serves and represents the interests of Native Hawaiians; has as a primary and stated purpose the provision of services to Native Hawaiians; and has demonstrated expertise in aspects of historic preservation that are significant to Native Hawaiians"; and the regulations define Native Hawaiian as "any individual who is a descendent of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii" (36 CFR 800.16(s)).

Further, DOE clarifies that use of "Federally recognized Indian tribe" in subpart D, appendix B of 10 CFR part 1021, is intended to include Indian and Alaska Native tribes that the Secretary of the Interior recognizes as eligible for programs and services provided by the United States to Indians because of their status as Indians. (25 U.S.C. 479a–1). Each year, the Bureau of Indian Affairs (BIA) publishes a list in the **Federal Register** of the recognized tribal entities. For purposes of appendix B to subpart D of 10 CFR part 1021, Federally recognized Indian tribes are those entities included on the BIA list. (A link to the list and a supplement, current at the time of this final rule's publication, can be found on the BIA Web site at *http://www.bia.gov/DocumentLibrary/index.htm.*) DOE would refer to the most current BIA list when considering the integral element.

Environmentally Sensitive Resources

DOE received comments (*e.g.*, from the Chesapeake Bay Foundation (at page 3), the Ocean Renewable Energy Coalition (at page 5), and Pacific Northwest National Laboratory (at page 1)) suggesting further modifications or clarifications to the list of environmentally sensitive resources that are part of the integral elements applicable to appendix B categorical exclusions (appendix B, paragraph (4)). DOE does not intend the examples in B(4) to be an exhaustive list of environmentally sensitive resources, but

agrees that additional examples would be helpful. DOE is adding the Bald and Golden Eagle Protection Act and the Migratory Bird Treaty Act to B(4)(ii). In addition, DOE is correcting a typographical error in the reference to the Marine Mammal Protection Act in B(4)(ii). Another comment (from the Chesapeake Bay Foundation (at page 4)) asked DOE to expand its listing of environmentally sensitive resources to "recognize and protect * * * resources of high local, state, or federal value and concern that may not enjoy, or may not yet have received, specific regulatory or statutory protection." Specifically, the comment (at page 3) asserted that DOE's clarification of environmentally sensitive resources was too limited because it would not include "riparian stream buffers * * * large forest or contiguous woodland assemblages, locally specified high value farmland * * * 'candidate' state or federal threatened or endangered species or their habitat * * * drinking water supply streams or reservoirs * * * or * * * headwater streams." In response to the comment, DOE is adding "state-proposed endangered or threatened species or their habitat" to the description of environmentally sensitive resources listed in integral element B(4)(ii), which already explicitly provides for consideration of "Federally-proposed or candidate species or their habitat." DOE is not adding the other resources described in the comment because they are not generally resources that have been identified as needing protection through Executive Order, statute, or regulation by Federal, state, or local government, or a Federally recognized Indian tribe. However, DOE acknowledges that the resource examples contained in the comment may be considered as extraordinary circumstances in making an individual categorical exclusion determination.

Similarly, another comment (from Joyce Dillard (at page 1)) expressed general concern regarding destruction of wetlands and aquifers and salt water intrusion. DOE's existing integral elements B(4)(iii) and (vi) provide for consideration of wetlands as well as special sources of water (including sole source aquifers) as environmentally sensitive resources. With respect to salt water intrusion, DOE would consider the potential for salt water intrusion, including whether it constitutes an extraordinary circumstance, before making a categorical exclusion determination. Also, see discussion of "would not have the potential to cause significant impacts" in section IV.C.4 of this preamble.

Genetically Engineered Organisms, Synthetic Biology, Governmentally Designated Noxious Weeds, and Invasive Species

DOE received several comments (in reference to categorical exclusions B3.6, B3.8, B3.12, B3.15, B5.15, B5.20, and B5.25; *e.g.*, from Center for Food Safety on behalf of itself and 3 other organizations (at pages 3–5) and National Wildlife Federation (at page 2)) regarding the use of genetically engineered organisms, noxious weeds, and invasive non-native species, such as non-native algae. These comments suggested that the development and use of such organisms could affect entire ecosystems. The comments expressed concern that these organisms could not be contained and could escape into the environment and potentially cause a variety of environmental and human health impacts.

DOE received similar comments (*e.g.*, from Center for Food Safety on behalf of itself and 3 other organizations (at pages 2 and 3)) regarding "synthetic biology," suggesting that the impacts of developing and releasing genetically engineered organisms, using man-made DNA sequences, were largely unknown and that such organisms could interact with native species and adversely affect the environment and entire ecosystems.

In addition, a comment from Center for Food Safety on behalf of itself and 3 other organizations (at page 2) asserted that DOE has provided more than $700 million in funding for synthetic biology research since 2006 and that this level of funding amounts to a programmatic research program that should be analyzed in an environmental impact statement. The comment also asserted that DOE is attempting to segment the potential environmental impacts of this research by seeking categorical "exemptions" from NEPA for individual research projects. As an initial matter, DOE disagrees with the comment's funding estimate. For example, almost all the funding is attributed to the Genomics Science Program and the Joint Genomics Institute, both of which are ongoing initiatives (begun in the 1980s and 1990s, respectively) that support research in several areas, only some of which can be referred to as synthetic biology. Moreover, DOE disagrees with the assertion that an amount of funding is sufficient to define a programmatic research program for which DOE should prepare an environmental impact statement. In determining whether an environmental impact statement is required or would be beneficial to its decisionmaking, DOE considers the nature of decisions to be made and the relationships among proposed actions and potential environmental impacts, among other factors. DOE has determined that, at this time, its activities related to synthetic biology do not constitute a programmatic research program and do not require an environmental impact statement.

DOE received several comments regarding research into bioenergy technologies, either performed or funded by DOE. Some of the comments (*e.g.*, from the Biotechnology Industry Organization (at page 3)) were supportive of this research and encouraged the use of categorical exclusions to remove barriers to the adoption of these technologies. Some comments (*e.g.*, from Center for Food Safety on behalf of itself and 3 other organizations (at page 5), National Wildlife Federation (at pages 2 and 4)) expressed concern about bioenergy research and the harvest of biomass involving invasive and non-native species, including non-native and genetically engineered algal species, specifically citing categorical exclusions B3.6, B3.8, and B5.25. The comments suggested that intentional or inadvertent release of invasive or non-native species, especially in aquatic environments, could have unanticipated consequences, including threats to local ecosystems, and the National Wildlife Federation (at page 2) suggested that categorical exclusions were appropriate only for plant species that "successfully pass[ed] an established weed risk assessment." Another comment (from the Biotechnology Industry Organization (at page 2)) requested that any regulations regarding biotechnology reflect the principles laid out in the Coordinated Framework for the Regulation of Biotechnology (51 FR 23302; June 26, 1986) and articulated by the White House Emerging Technologies Interagency Policy Coordination Committee.

To address these comments, DOE considered the addition of further restrictions to individual categorical exclusions, but opted instead to add a new integral element that will be applicable to all appendix B categorical exclusions. This integral element requires that, to fit the classes of actions in appendix B, a proposal must be one that would not "[i]nvolve genetically engineered organisms, synthetic biology, governmentally designated noxious weeds, or invasive species, unless the proposed activity would be contained or confined in a manner designed and operated to prevent unauthorized release [that is, a release

not subject to an experimental use permit issued by the Environmental Protection Agency (EPA), a permit or notification issued by the Department of Agriculture (USDA), or a granting of nonregulated status by the USDA] into the environment and conducted in accordance with applicable requirements, such as those of the Department of Agriculture, the Environmental Protection Agency, and the National Institutes of Health." Examples of applicable guidelines and requirements include National Institutes of Health "Guidelines for Research Involving Recombinant DNA Molecules" (*http://oba.od.nih.gov/rdna/nih_guidelines_oba.html*); USDA "Noxious Weed Regulations" (7 CFR part 360) and regulations for the "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests" (7 CFR part 340); and EPA Reporting Requirements and Review Processes for Microorganisms (40 CFR part 725, particularly 40 CFR 725.200–470). These regulations impose appropriate containment and confinement measures to address the risk of inadvertent release of experimental organisms. In order to qualify for a categorical exclusion, a proposed action would have to prevent unauthorized releases into the environment, comply with all applicable requirements, and meet other conditions of the applicable categorical exclusion.

This new integral element obviates the need for the last sentence in categorical exclusion B3.8, as proposed, and that sentence is removed in the final rule. This integral element limits the activities that can receive a categorical exclusion determination to those that will not be released into the environment without proper authorization and will be conducted in accordance with applicable requirements, which include containment, confinement, or other requirements for working with these organisms. The new integral element takes into account both the principles laid out in the Coordinated Framework for the Regulation of Biotechnology and by the White House Emerging Technologies Interagency Policy Coordination Committee.

A comment relating to categorical exclusion B3.8 (from the National Wildlife Federation (at page 2) and also from Center for Food Safety on behalf of itself and 3 other organizations (at page 4)) stated that USDA approval of a genetically engineered crop does not guarantee environmental safety. DOE believes that, in general, it is reasonable to consider compliance with applicable regulations as a factor in determining whether a proposed action would have the potential to cause significant environmental impacts. In the case of genetically engineered plants regulated by USDA, its regulations require the agency to perform independent NEPA analysis before the plants may be grown outdoors (7 CFR part 372). When grown for research purposes, USDA regulations further require that field trials of genetically engineered plants are conducted with sufficient confinement methods in place such that the plants will not persist in the environment or pose the risk for significant environmental impacts (7 CFR part 340).

DOE is generally limiting categorical exclusions involving the activities mentioned in the comments to small-scale, as opposed to commercial-scale, actions. In DOE's experience, small-scale research and development activities normally do not have the potential to cause significant environmental impacts (see section IV.C.3).

A few comments (*e.g.*, Center for Food Safety on behalf of itself and 3 other organizations (at page 4)) suggested that genetically engineered crops grown for biofuels production might cause environmental impacts different from genetically engineered plants grown for other purposes, but the comments did not indicate what those differential impacts would be. DOE foresees no difference in environmental impacts from a small research plot of genetically engineered plants grown for the purpose of food or fiber as compared to the impacts from the same plants grown for biomass.

Another comment from the National Wildlife Federation (at page 2) and the Center for Food Safety (on behalf of itself and 3 other organizations; at page 4) suggested that, once DOE provided funding to a researcher to perform work with non-genetically engineered organisms under a categorical exclusion, the researcher could switch to the use of a genetically engineered organism without incurring further NEPA review. Under the terms of DOE funding agreements, the scope of work is disclosed by the researcher, and fundamental changes such as those suggested in the comment would require further NEPA analysis.

8. Powerlines

In the Notice of Proposed Rulemaking DOE proposed to change "electric powerlines" to "electric transmission lines" in several categorical exclusions to update technology-specific vocabulary. DOE received a general comment from Edison Electric Institute (at page 2) requesting that it further revise the proposed phrase to include distribution lines and related facilities to ensure that the relevant categorical exclusions are not limited to just transmission lines, but apply to energy delivery facilities more generally. Upon further consideration, DOE is using the term "powerlines" to be inclusive of both transmission and distribution lines (see categorical exclusions B1.3(m), B1.9, B4.7, B4.10, B4.12, B4.13, and class of actions C4).

9. Appendix B—Categorical Exclusions

Categorical Exclusions Applicable to Facility Operations (B1)

B1.3 Routine Maintenance

DOE received comments (*e.g.*, from Pacific Northwest National Laboratory (at page 3)) suggesting that categorical exclusion B1.3 covers minor types of activities that are of a sufficiently small scale not to warrant the documentation required of an appendix B categorical exclusion and, therefore, such actions should be listed in appendix A. DOE is committed to increasing the transparency of its NEPA implementing regulations and practices, and DOE decided not to move this categorical exclusion from appendix B, for which a public document is prepared and posted on DOE's NEPA Web site (*http://energy.gov/nepa/doe-nepa-documents/categorical-exclusion-determinations*), to appendix A, for which no documentation is required. Further, the actions under categorical exclusion B1.3 include physical activities in contrast to the more administrative functions covered by categorical exclusions in appendix A. Thus, DOE is not making any changes based on these comments.

DOE also received a comment from Sandy Beranich (at page 1) regarding item (k) in categorical exclusion B1.3. The comment suggested DOE insert additional examples of erosion control and soil stabilization measures, specifically "gabions" and "grading." The examples already provided in the proposed B1.3(k), reseeding and revegetation, were not meant to serve as an exhaustive list, and other measures could qualify for categorical exclusion under B1.3(k). Nonetheless, DOE is adding the two examples suggested in the comment because they will help illustrate the types of erosion control and soil stabilization measures that are encompassed by B1.3(k).

B1.5 Existing Steam Plants and Cooling Water Systems

In its Notice of Proposed Rulemaking, DOE proposed modifying the second condition of this categorical exclusion from would not "adversely affect water withdrawals or the temperature of discharged water" to would not "have the potential to cause significant impacts on water withdrawals or the temperature of discharged water." After further consideration, DOE is revising the language in this categorical exclusion to further specify the conditions. DOE is changing these provisions to: "Improvements would not: * * * (2) have the potential to significantly alter water withdrawal rates; (3) exceed the permitted temperature of discharged water * * *."

B1.11 Fencing

After further consideration, DOE is modifying this categorical exclusion to better focus on the types of impacts to wildlife that might be caused by fencing. DOE is replacing "would not have the potential to cause significant impacts on wildlife populations or migration * * *" with "would not have the potential to significantly impede wildlife population movement (including migration) * * *." Also, see discussion of "would not have the potential to cause significant impacts" in section IV.C.4 of this preamble.

B1.14 Refueling of Nuclear Reactors

DOE received a comment from Sandy Beranich (at page 2) asking which section of the DOE NEPA regulations addresses the disposition of spent nuclear fuel. Management and disposition of spent nuclear fuel would typically be the subject of the NEPA review for the facility (*e.g.*, an environmental impact statement is required under class of action D4, for "siting, construction, operation, and decommissioning of power reactors, nuclear material production reactors, and test and research reactors"). The comment does not propose a change to this categorical exclusion, and DOE is retaining the proposed language in the final categorical exclusion.

B1.18 Water Supply Wells

For DOE's response to comments on this categorical exclusion, see discussion of "would not have the potential to cause significant impacts" in section IV.C.4 of this preamble.

B1.19 Microwave, Meteorological, and Radio Towers

In its Notice of Proposed Rulemaking, DOE proposed adding "abandonment" to the list of activities included in this class of actions in order to encompass the complete life cycle of the towers addressed by the categorical exclusion. After further consideration, DOE acknowledges that abandonment could be misconstrued so as to absolve DOE of all responsibility for a tower, including for maintenance. This was not DOE's intent. Thus, DOE is removing "abandonment" from the list of activities in this categorical exclusion (but is keeping "modification" and "removal"). For towers that are no longer used, DOE's normal practice would be to remove the tower or transfer responsibility to another party.

As noted elsewhere in this preamble, DOE received public comments related to potential impacts on bird populations that could be associated with the use of categorical exclusions. Though none of the public comments was specific to categorical exclusion B1.19, DOE nonetheless considered the comments in the context of the activities addressed in this categorical exclusion and reviewed current information related to the potential impacts of relevant towers on bird populations. DOE concluded that its existing provisions, including for determining whether a proposal meets the integral elements of the categorical exclusion (particularly appendix B, paragraph (4)) and whether there are any associated extraordinary circumstances that would affect the significance of impacts, ensure appropriate consideration of proposed tower design (height, use of guy wires, lighting) and location. Therefore, DOE is not further revising categorical exclusion B1.19.

In addition, a comment from Edison Electric Institute (at page 2) asked DOE to add individual electric transmission towers and distribution poles to the scope of this categorical exclusion. Because electric transmission towers and distribution poles are already included in the scope of DOE's existing B4 categorical exclusions, DOE is not making any changes to categorical exclusion B1.19 in response to this comment.

B1.24 Property Transfers

A comment from Natural Resources Defense Council and Committee to Bridge the Gap (at page 2) expressed concern that the reference to contamination was being removed from the categorical exclusion. DOE's existing categorical exclusion is limited to property that is uncontaminated, which is defined to mean that there "would be no potential for release of substances at a level, or in a form, that would pose a threat to public health or the environment." A comment from Columbia Riverkeeper (at page 5) stated that this categorical exclusion is not warranted. DOE is not changing the scope of the categorical exclusion but is merely re-wording the categorical exclusion to incorporate the definition of "uncontaminated" in a different way. Thus, DOE is making no change to the categorical exclusion in response to this comment. A separate comment stated that a categorical exclusion for the transfer, lease, or disposition of contaminated property is not warranted. DOE agrees, and, as described above, the categorical exclusion is limited to property for which there would be no potential for release of substances at a level, or in a form, that would pose a threat to public health or the environment. Therefore, DOE is not making a change to the categorical exclusion based on this comment.

A comment from Columbia Riverkeeper (at page 6) stated that DOE's approach does not account for the environmental impacts of future operations after the transfer. DOE responds that the second limitation proposed for the categorical exclusion states that "under reasonably foreseeable uses * * * the covered actions would not have the potential to cause a significant change in impacts from before the transfer * * *" This limitation would require the NEPA Compliance Officer to consider the significance of potential environmental impacts of reasonably foreseeable future uses (including during operations, as indicated by the comment) of the transferred property.

Several comments (*e.g.*, from Columbia Riverkeeper (at page 6) and Natural Resources Defense Council/ Committee to Bridge the Gap (at page 1)) questioned how DOE can assess whether an action is appropriately covered by this categorical exclusion without preparing an environmental assessment or environmental impact statement. The process DOE uses for making a categorical exclusion determination is described in this notice under section III, Overview of Categorical Exclusions, above.

A comment from Columbia Riverkeeper (at page 6) stated that there would be no pathway for public involvement or comment on DOE's review under categorical exclusion B1.24. DOE is increasing public involvement and comment opportunities with regard to categorical exclusion A7, transfers of personal property, by combining it into categorical exclusion B1.24. The result is that the scope of B1.24 includes both personal and real property, and since it

is an appendix B categorical exclusion, it is subject to the online posting requirement of 10 CFR 1021.410(e). Under this new rule, DOE is codifying its policy to document and post online appendix B categorical exclusion determinations at 10 CFR 1021.410(e), consistent with the policy established by the Deputy Secretary of Energy's *Memorandum to Departmental Elements on NEPA Process Transparency and Openness,* October 2, 2009. This process provides an opportunity for public review of the categorical exclusion determination. In addition, see discussion of "would not have the potential to cause significant impacts" in section IV.C.4 of this preamble.

B1.25 Real Property Transfers for Cultural Protection, Habitat Preservation, and Wildlife Management

A comment from Edison Electric Institute (at page 2) encouraged DOE to stipulate in the categorical exclusion that any permit holders and owners of facilities on land involved in the transfers must be given advance notice so they can protect their rights. This comment raises concerns unrelated to environmental review under NEPA, which is the scope of this regulation. For this reason, DOE is retaining the proposed language in the final categorical exclusion. Separately, DOE is adding the word "Real" to the title of this categorical exclusion to clarify that the scope of the categorical exclusion does not include personal property.

B1.26 Small Water Treatment Facilities

Although DOE did not propose to substantively change this categorical exclusion, a comment from the Chesapeake Bay Foundation (at page 4) disagreed with the existing categorical exclusion's characterization that a "small" surface water or wastewater treatment facility is one with "a total capacity less than approximately 250,000 gallons per day," and stated that an environmental assessment might be appropriate if the context of a facility so warrants. DOE's experience over many years is that a water or wastewater treatment facility processing 250,000 gallons or less per day is of a size that normally would not have the potential for significant impacts. For further information, see discussion of "small" and "small-scale" in section IV.C.3 of this preamble. A NEPA Compliance Officer would consider location and context in determining whether a proposal meets the integral elements of the categorical exclusion (listed in appendix B, paragraph (4)) and whether there are any associated extraordinary circumstances that would affect the significance of impacts. In accordance with integral element B(1) of the DOE NEPA regulations, DOE would ensure that water treatment facilities under this categorical exclusion would not threaten a violation of applicable statutory, regulatory, or permit requirements. For example, a wastewater treatment facility would comply with the National Pollutant Discharge Elimination System permit issued by the cognizant regulatory authority, which would ensure that pollutant loads are consistent with applicable water quality standards. For these reasons, DOE is retaining the proposed language in the final categorical exclusion.

B1.29 Disposal Facilities for Construction and Demolition Waste

A comment from the Chesapeake Bay Foundation (at page 5) recommended that the existing limitation of less than approximately 10 acres be reduced to less than approximately 5 acres; the comment did not provide the basis or any support for this recommendation. DOE is retaining the existing limitation of less than 10 acres. The comment also referred to consideration of context and intensity, including the location, landscape setting, and other resources present, in determining whether a given project is "small." DOE agrees. For further information, see discussion of "small" and "small-scale" in section IV.C.3 of this preamble. Under DOE's NEPA regulations, a NEPA Compliance Officer would evaluate the considerations cited in determining whether a proposal meets the integral elements of the categorical exclusion (listed in appendix B, paragraphs (1) through (5)) and whether there are any associated extraordinary circumstances that would affect the significance of impacts. For these reasons, DOE is retaining the proposed language in the final categorical exclusion.

B1.33 Stormwater Runoff Control

DOE received a comment from Joyce Dillard (at page 1) stating that stormwater control is another potential money maker for local policymakers and the danger is high. DOE notes this comment and is not making any changes to this categorical exclusion in response.

B1.34 Lead-Based Paint Containment, Removal, and Disposal

DOE is adding "containment, removal, and disposal" to the title of this categorical exclusion for clarification.

Categorical Exclusions Applicable to Safety and Health

B2.3 Personal Safety and Health Equipment

For DOE's response to comments on this categorical exclusion, see discussion of "would not have the potential to cause significant impacts" in section IV.C.4 of this preamble.

Categorical Exclusions Applicable to Site Characterization, Monitoring and General Research (B3)

B3.1 Site Characterization and Environmental Monitoring

After further consideration, DOE is clarifying the means by which to address potential impacts from ground disturbance. DOE is replacing the second sentence of the categorical exclusion (as proposed in the Notice of Proposed Rulemaking) with the following: "Such activities would be designed in conformance with applicable requirements and use best management practices to limit the potential effects of any resultant ground disturbance."

A comment from Sandy Beranich (at page 2) requested clarification of the size of certain projects covered by this categorical exclusion, saying that the difference between small and large-scale projects is subject to interpretation. DOE's discussion of "small" and "small-scale" appears in section IV.C.3 of this preamble.

In its Notice of Proposed Rulemaking, DOE included "abandonment" in the list of potential activities included in this categorical exclusion and in categorical exclusion B1.19 in order to encompass the complete life cycle of the characterization and monitoring devices in B3.1 and the towers in B1.19. As described with respect to B1.19, after further consideration, DOE acknowledges that abandonment could be misconstrued so as to absolve DOE of all responsibility for such devices or facilities, including for maintenance. This was not DOE's intention. Therefore, DOE is removing "abandonment" (and adding "removal or otherwise proper closure (such as of a well)") in the text describing the life cycle of characterization and monitoring devices and facilities addressed by the categorical exclusion.

To simplify the categorical exclusion, DOE is changing "salt water and freshwater" to "aquatic environments." Aquatic, as used herein, may refer to salt water, freshwater, or areas with shifting delineation between the two; this is not a substantive change.

B3.6 Small-Scale Research and Development, Laboratory Operations, and Pilot Projects

Categorical exclusion B3.6 does not include demonstration actions, as stated in the Notice of Proposed Rulemaking. However, after reviewing public comments and further internal consideration, DOE is revising the text to state this condition more clearly. Separately, a comment (*e.g.*, from Friends of the Earth and from Center for Food Safety on behalf of itself and 3 other organizations (at page 1)) stated that this categorical exclusion should be rejected, because its use could cause significant impacts; DOE has determined that this categorical exclusion, by its terms and in light of the integral element and extraordinary circumstances requirements, is appropriate and would not have the potential for significant impacts.

DOE received comments regarding the use of genetically engineered organisms, synthetic biology, noxious weeds, and non-native species, such as non-native algae in projects that may be categorically excluded under this section of the rule. For further information, see discussion of "Genetically engineered organisms, synthetic biology, governmentally designated noxious weeds, or invasive species" in section IV.C.7 of this preamble.

DOE received a comment from Center for Food Safety on behalf of itself and 3 other organizations (at page 3) that the difference between a pilot study and a demonstration action, which could require an environmental assessment or environmental impact statement, is unclear and suggested that this categorical exclusion could be applied to large-scale, open-pond projects involving genetically engineered algae or algae altered through synthetic biology without review of environmental risks. DOE disagrees. This categorical exclusion applies only to small-scale projects, such as those performed for proof of concept purposes. For further information, see discussion of "small" and "small-scale" in section IV.C.3 of this preamble. Further, before a categorical exclusion determination can be made, the proposed action undergoes review, for example, to determine whether it is consistent with the integral elements and the conditions of the particular categorical exclusion.

B3.7 New Terrestrial Infill Exploratory and Experimental Wells

DOE received a comment from Joyce Dillard (at page 1) regarding the risks associated with injection wells. Categorical exclusion B3.7 requires that the well be sited within an existing, characterized well field and requires that the site characterization has verified a low potential for seismicity. DOE has experience in the construction and operation of exploratory and experimental wells and, in DOE's experience, these conditions are appropriate. Therefore, DOE is retaining the proposed language in the final categorical exclusion. (The issue is also relevant to categorical exclusions B5.3, B5.12, and B5.13.)

DOE intended this categorical exclusion to include both extraction and injection wells. After further consideration, DOE is adding "for either extraction or injection use" to clarify the scope of new terrestrial infill exploratory and experimental well activities under this categorical exclusion.

B3.8 Outdoor Terrestrial Ecological and Environmental Research

After further consideration, DOE is clarifying the means by which to address potential impacts from ground disturbance. DOE is deleting the following words from the end of the first sentence of the categorical exclusion: "provided that such activities would not have the potential to cause significant impacts on the ecosystem" (as proposed in the Notice of Proposed Rulemaking). The following new second sentence is being inserted: "Such activities would be designed in conformance with applicable requirements and use best management practices to limit the potential effects of any resultant ground disturbance."

DOE is deleting the following sentence to avoid confusion: "These actions include, but are not limited to, small test plots for energy related biomass or biofuels research." Although this categorical exclusion is appropriate for small biomass or biofuels research, it is only one example of a variety of research projects that could be included in the class of actions described by categorical exclusion B3.8. Another comment (from Friends of the Earth and from Center for Food Safety on behalf of itself and 3 other organizations (at page 1)) stated that this categorical exclusion should be rejected because its use could cause significant impacts; DOE has determined that this categorical exclusion, by its terms and in light of the integral element and extraordinary circumstances requirements, is appropriate and would not have the potential for significant impacts.

DOE received comments regarding the use of genetically engineered organisms, synthetic biology, noxious weeds, and non-native species, such as non-native algae in projects that may be categorically excluded under this section of the rule. For further information, see discussion of "Genetically engineered organisms, synthetic biology, governmentally designated noxious weeds, or invasive species" in section IV.C.7 of this preamble. DOE is deleting the last sentence of the categorical exclusion (as proposed in the Notice of Proposed Rulemaking), because the use of genetically engineered organisms is now addressed by the new integral element.

B3.9 Projects To Reduce Emissions and Waste

DOE received a comment from Edison Electric Institute (at page 2) expressing concern that the list of fuels provided in this categorical exclusion did not encompass all fuels with the potential to reduce emissions and waste. It was DOE's intention that the list be illustrative, rather than exhaustive, so DOE is replacing the second and third sentences of the categorical exclusion with the following sentence: "For this category of actions, 'fuel' includes, but is not limited to, coal, oil, natural gas, hydrogen, syngas, and biomass; but 'fuel' does not include nuclear fuel."

B3.11 Outdoor Tests and Experiments on Materials and Equipment Components

DOE received a comment from Tri-Valley CAREs (at page 4) regarding the use of encapsulated source, special nuclear, or byproduct materials for nondestructive tests and experiments. The comment expressed concern that the encapsulation could be accidentally destroyed, releasing the contents into the environment. The comment also noted that the categorical exclusion did not limit the amount of encapsulated materials that could be used. DOE responds that capsules for source, special nuclear, and byproduct material are designed using technologies and materials to enable their safe transport and use. These capsules are tested to withstand extremes of temperature and pressure and to resist severe impacts, puncture, and vibration without allowing their contents to escape. Such encapsulation can readily withstand the types of handling that would occur during the nondestructive tests and experiments covered by the categorical exclusion. Performance requirements for such testing are based on factors such as the type and amount of radioactive material involved and intended use of the source. Therefore, there is minimal risk that encapsulated materials will be

inadvertently released into the environment. Because encapsulation addresses the risk of environmental release, DOE is not including a limit on the amount of encapsulated source, special nuclear, or byproduct material that could be used in the nondestructive tests and experiments covered by the categorical exclusion. Any such limit would be part of the design of a nondestructive test or experiment, which would include appropriate protocols to protect participants and the environment. DOE is retaining the proposed language and adding a reference to applicable standards to the categorical exclusion in the final rule.

B3.12 Microbiological and Biomedical Facilities

Comments (*e.g.*, from Friends of the Earth and Center for Food Safety on behalf of itself and 3 other organizations (at page 1)) stated that this categorical exclusion should be rejected, because its use could cause significant impacts; DOE has determined that this categorical exclusion, by its terms and in light of the integral element and extraordinary circumstances requirements, is appropriate and would not have the potential for significant impacts. DOE received comments from Center for Food Safety on behalf of itself and 3 other organizations (at page 4) raising concerns that the environmental release of genetically engineered organisms or synthetic organisms (including genetically engineered algae or synthetic biology) from a microbiological or biomedical facility (including facilities to house such organisms for the production of biofuels) could pose risks to local ecosystems, during both the operation and decommissioning of these facilities. In response, DOE points out that facilities covered by this categorical exclusion must be constructed and maintained in accordance with all applicable regulations, including provisions (*e.g.*, the use of biological safety cabinets and chemical fume hoods) to ensure the containment of organisms that may pose environmental risks as well as the destruction of these organisms when they are no longer needed. Generally, these regulations and practices have been effective in preventing unintended releases of research organisms and thereby prevented impacts to the environment from these organisms. Further, DOE received comments regarding the use of genetically engineered organisms, synthetic biology, noxious weeds, and non-native species, such as non-native algae in projects that may be categorically excluded under this section of the rule. For further information, see discussion of "Genetically engineered organisms, synthetic biology, governmentally designated noxious weeds, or invasive species" in section IV.C.7 of this preamble.

In addition, DOE is updating the reference to the manual on Biosafety in Microbiological and Biomedical Laboratories to the most current version.

B3.14 Small-Scale Educational Facilities

A comment from the Chesapeake Bay Foundation (at page 5) stated that a specific small size limitation should be added for the facilities under the proposed categorical exclusion or the categorical exclusion should be eliminated from the rulemaking. The comment suggested that DOE consider including a limit of 5 acres or smaller, and be restricted to placement in a developed area. When considering the physical size and location of a proposed educational facility, a DOE NEPA Compliance Officer would review the surrounding land uses, the scale of the proposed facility relative to existing development, and the capacity of existing roads and other infrastructure. The NEPA Compliance Officer would have to determine that the size of the proposed facility, in the context of its location and surroundings, was sufficiently small that it would not have the potential to cause significant environmental impacts. Thus, DOE is not proposing any modifications to this categorical exclusion. For further information, see discussion of "small" and "small-scale" in section IV.C.3 of this preamble.

In addition, DOE received a comment from Joyce Dillard (at page 1) that states, rather than the Federal government, are responsible for education and its related facilities. DOE acknowledges this comment and notes that the categorical exclusion is intended to address small facilities that are generally educational in nature, such as visitor centers, small museums, libraries, and similar facilities. Such facilities may be part of a school or university. Therefore, DOE is retaining the proposed language in the final categorical exclusion.

B3.15 Small-Scale Indoor Research and Development Projects Using Nanoscale Materials

A comment from Center for Food Safety on behalf of itself and 3 other organizations (at page 1) stated that this categorical exclusion should be rejected, because its use could cause significant impacts; DOE has determined that this categorical exclusion, by its terms and in light of the integral element and extraordinary circumstances requirements, is appropriate and would not have the potential for significant impacts. Additionally, DOE received comments (*e.g.*, from Friends of the Earth (in attachment titled Nanotechnology, Climate and Energy), and Center for Food Safety on behalf of itself and 3 other organizations (at page 4)) expressing a wide range of environmental and human health concerns regarding a potential release of nanoscale materials into the environment or commercial-scale use of nanoscale materials. DOE reiterates that this categorical exclusion may be used only for facilities for indoor small-scale research activities and not involving the environmental release, or commercial-scale production, of nanoscale materials. For further information, see discussion of "small" and "small-scale" in section IV.C.3 of this preamble. Covered facilities employing nanoscale materials would be constructed and operated in accordance with applicable requirements to ensure worker safety and to prevent environmental releases. Therefore, DOE is retaining the proposed language in the final categorical exclusion, with one exception. DOE is changing "biohazardous materials" to "hazardous materials," in the final categorical exclusion. Hazardous materials is a broader category that includes biohazardous materials, and thus better reflects the range of materials that would need to be safely managed for this type of research and development work.

B3.16 Research Activities in Aquatic Environments

To simplify the categorical exclusion, DOE is changing "salt water and freshwater" to "aquatic." Aquatic, as used herein, may refer to salt water, freshwater, or areas with shifting delineation between the two; this is not a substantive change. In addition, DOE is clarifying in the preamble that passive seismic techniques in item (c) refers to activities (*e.g.*, use of seismometers) that do not involve the introduction of energy or vibration that would have the potential for significant environmental impacts.

A comment from Pacific Northwest National Laboratory (at page 2) suggested that many of the activities described in this categorical exclusion, such as sample collection, installation of environmental monitoring devices, and other ecological research, should be allowed within the boundary of a marine sanctuary or wildlife refuge, if conducted in a manner consistent with

sanctuary goals and objectives. DOE agrees that, if the listed activities are authorized by the government agency responsible for the management of the sanctuary or refuge, or after consultation with such responsible agency when authorization is not applicable, then the activity may be categorically excluded under B3.16. Therefore, DOE is modifying categorical exclusion B3.16 (and B5.25) to now allow covered actions within, or having effects on, existing or proposed marine sanctuaries, wildlife refuges, or governmentally recognized areas of high biological sensitivity, if the action receives authorization from, or after consultation with, the responsible agency. The DOE NEPA Compliance Officer would take concerns from the responsible agency into account when considering whether to apply this categorical exclusion.

DOE also received a comment from DOI (at page 1) stating that it has initiated the process of reviewing and potentially revising or deleting some of its own categorical exclusions. DOE had relied on some of these DOI categorical exclusions, as well as categorical exclusions from the Department of the Navy and the National Oceanic and Atmospheric Administration, when developing this categorical exclusion. In response to the DOI comment, DOE is revising categorical exclusion B3.16 in the final rule to remove certain research activities adapted from DOI's categorical exclusions. The remaining activities are consistent with other Federal agencies' existing categorical exclusions, as well as activities included in other DOE categorical exclusions, such as flow measurements (see categorical exclusion B3.1).

DOE received a comment from DOI (at page 2) expressing concern that DOE would categorically exclude proposed actions located in unsurveyed areas of the seafloor under categorical exclusions B3.16 and B5.25. The comment suggested that DOE should perform an assessment of survey data within the area of potential effect or complete an assessment of potential seafloor impacts from the proposed activities before DOE makes a categorical exclusion determination. In response, DOE notes that a NEPA Compliance Officer, when considering a proposed action in an unsurveyed area, would gather additional information about the proposed project site needed to support a categorical exclusion determination under B3.16 and B5.25. It is the responsibility of the DOE NEPA Compliance Officer to consider the potential for significant impacts and to consult with other agencies as necessary when considering a proposed action.

DOE received comments regarding the use of genetically engineered organisms, synthetic biology, noxious weeds, and non-native species, such as non-native algae, in projects that may be categorically excluded under this section of the rule. For further information, see discussion of "Genetically engineered organisms, synthetic biology, governmentally designated noxious weeds, or invasive species" in section IV.C.7 of this preamble.

DOE received a comment from National Wildlife Federation (at page 4) expressing strong support for "removing unnecessary barriers to the commercialization of deepwater offshore wind technology," and stating that "[w]ith siting screens, research and demonstration projects in these technologies will not have significant impacts." DOE does not currently have the experience to support expanding the categorical exclusion to include such projects, but this may change as DOE gains experience over time.

Categorical Exclusions Applicable to Electrical Power and Transmission (B4)

DOE is changing the title of this group of categorical exclusions to state that they are applicable to "electrical power and transmission," rather than to "power resources," as used in the existing regulations and the Notice of Proposed Rulemaking. This change better identifies the subject of this group of categorical exclusions.

B4.1 Contracts, Policies, and Marketing and Allocation Plans for Electric Power

In the Notice of Proposed Rulemaking, DOE proposed to clarify the scope of this categorical exclusion by stating that the contracts, policies, and marketing and allocation plans are "related to electric power acquisition or transmission." After further consideration, DOE will not explicitly refer to transmission in this categorical exclusion; transmission activities are included in the contracts, policies, and marketing plans, or are covered primarily in other classes of actions, such as categorical exclusion B4.11.

B4.4 Power Marketing Services and Activities

Upon further consideration, DOE is changing the example of "load shaping" to "load shaping and balancing." Load balancing helps ensure system reliability by managing energy resources to be equal with load.

B4.6 Additions and Modifications to Transmission Facilities

After further consideration, DOE will not adopt its proposal to apply this categorical exclusion to facilities that "would not have the potential to cause significant impacts beyond the previously disturbed or developed facility area" and instead this categorical exclusion will be limited to actions "within a previously disturbed or developed facility area." DOE is making this change to conform the categorical exclusion to others that relate to proposed actions in a previously disturbed or developed area. In addition, after further consideration, DOE is making a clarifying improvement by moving the activity examples to a separate sentence. For further information, see discussion of "Previously disturbed or developed area" in section IV.C.2 of this preamble.

B4.9 Multiple Uses of Transmission Line Rights-of-Way

A comment from Edison Electric Institute (at page 3) on this categorical exclusion, for granting or denying requests for multiple uses of a transmission facility's rights-of-way, requested that DOE specify that multiple uses need to accommodate technical and other concerns that may be raised by the owners of the transmission facilities involved. This categorical exclusion is used by DOE entities, for example Power Marketing Administrations, in responding to a request regarding their own transmission facility rights-of-way, not those owned by other parties. Therefore, DOE is retaining the proposed language in the categorical exclusion in the final rule.

B4.10 Removal of Electric Transmission Facilities

A comment from Edison Electric Institute (at page 3) expressed agreement with the proposed changes to the categorical exclusion, but requested that DOE stipulate that any permit holders and owners of facilities affected by the abandonment must be given advance notice so they can protect their rights. This comment raises concerns unrelated to environmental review under NEPA, which is the scope of this regulation. For this reason, DOE is retaining its proposed categorical exclusion as the final categorical exclusion.

DOE is changing the title of this categorical exclusion to more closely reflect the wording of the categorical exclusion.

B4.11 Electric Power Substations and Interconnection Facilities

DOE is simplifying the wording of this categorical exclusion. In the Notice of Proposed Rulemaking, DOE proposed that actions under this categorical exclusion be restricted to interconnecting new generation resources that meet two conditions—that the new generation resource would be eligible for a categorical exclusion and that it would be equal to or less than 50 average megawatts. DOE determined that these limitations on the generation resource were more limiting than necessary to ensure appropriate application of this categorical exclusion. The appropriate limit is that the generation resource not pose the potential for significant environmental impacts. This limit already is addressed in DOE's existing NEPA regulations, which state, in part, that before applying a categorical exclusion, DOE must determine that the proposed action is not "connected" (40 CFR 1508.25(a)(1)) to other actions with potentially significant impacts (10 CFR 1021.410(b)(3)).

DOE received a comment from the Chesapeake Bay Foundation (at page 5) stating that "a categorical exclusion without any limitations or conditions on what can be fairly substantial development is inappropriate" and that DOE should consider context and size to ensure that actions with significant impacts are not categorically excluded. In applying this categorical exclusion, a NEPA Compliance Officer considers context and size, along with other factors associated with potential for significant impacts, and DOE prepares an environmental assessment or environmental impact statement if a categorical exclusion determination is not appropriate.

B4.12 Construction of Powerlines

DOE is simplifying the wording of this categorical exclusion with respect to activities not in previously disturbed or developed rights-of-way. Upon further consideration, DOE is removing the limitation on interconnection of new generation resources proposed for this categorical exclusion for the same reason described above for categorical exclusion B4.11.

B4.13 Upgrading and Rebuilding Existing Powerlines

DOE is simplifying the wording of this categorical exclusion by removing the limitation on interconnection of new generation resources. The existing categorical exclusion B4.13 does not include a condition regarding interconnections, and DOE has determined that it is not necessary to add one. Also, any proposed upgrade or rebuild of existing powerlines would be subject to the same consideration regarding connected actions as described above for categorical exclusion B4.11.

Categorical Exclusions Applicable to Conservation, Fossil, and Renewable Energy Activities (B5)

B5.3 Modification or Abandonment of Wells

DOE received a comment from the Chesapeake Bay Foundation (at page 6) that well abandonment should be accompanied by revegetation and rehabilitation of the area. In response, DOE notes that abandonment of a well normally includes actions such as plugging, welding, or crimping and backfilling to ensure safety and prevent contamination from entering the well. DOE's proposed language adds new conditions, including that this categorical exclusion could only apply if the well abandonment were to be conducted "consistent with best practices and DOE protocols," such as those to address revegetation and rehabilitation, among other issues. Therefore, DOE is retaining the proposed language in the categorical exclusion in the final rule. DOE notes, however, that revegetation and rehabilitation may not always be part of a proposed abandonment, where, for example, continued maintenance of cleared areas may be necessary because of ongoing operations near the abandoned well.

B5.4 Repair or Replacement of Pipelines, B5.5 Short Pipeline Segments, and B5.8 Import or Export Natural Gas, With New Cogeneration Powerplant

A comment from an anonymous individual (at page 2) objected to the categorical exclusions for pipelines because "major pipelines blow up" and asserted that DOE has allowed major oil firms to fail to maintain pipelines and has failed to adequately punish these companies for oil spills. DOE's experience is that the types of pipeline projects addressed by these categorical exclusions do not pose significant risk of accident and, indeed, repair, replacement, and similar activities can reduce such risks. DOE is retaining the proposed language in the categorical exclusions in the final rule.

B5.13 Experimental Wells for the Injection of Small Quantities of Carbon Dioxide

A comment from Sandy Beranich (at page 2) expressed concern that the injection of carbon dioxide into experimental wells should be allowed only after completing an environmental assessment. The comment also inquired as to DOE experience with these wells and their potential impacts. DOE has identified, in the Technical Support Document, multiple environmental assessments and findings of no significant impact and the results of field projects that demonstrate DOE experience with wells of a scale covered by this categorical exclusion. These environmental assessments and findings of no significant impact demonstrate that the operation of such wells normally does not result in significant environmental impacts.

To simplify the categorical exclusion, DOE is changing "salt water and freshwater" to "aquatic environments."Aquatic, as used herein, may refer to salt water, freshwater, or areas with shifting delineation between the two; this is not a substantive change.

B5.15, B5.16, B5.17, B5.18, and B5.25 Renewable Energy

Certain of DOE's proposed categorical exclusions for small-scale renewable energy projects include a condition that a proposed project "would incorporate appropriate control technologies and best management practices." DOE received a comment from Defenders of Wildlife (at pages 2–5) recommending that the control technologies and best management practices for five categorical exclusions (B5.15, B5.16, B5.17, B5.18, and B5.25) include pre-development surveys, mitigation measures, continued monitoring, and decommissioning/reclamation. In response, DOE notes that it normally would consider these and other practices during its NEPA review, including when determining whether to apply one of the categorical exclusions referenced by the comment.

The comment first recommended inclusion of pre-development surveys for endangered and threatened species and other sensitive resources. DOE already evaluates the likelihood of potential impacts to threatened and endangered species and sensitive ecological resources through the integral elements applicable to all appendix B categorical exclusions, as well as the consideration of extraordinary circumstances. Furthermore, predevelopment surveys may be required as part of compliance with

other regulations (*e.g.*, those pertaining to the Endangered Species Act, Bald and Golden Eagle Protection Act) and would be considered by DOE in its decision whether to apply a categorical exclusion to a particular proposed action.

The second recommendation in the comment was to include mitigation measures to compensate for impacts to ecological resources. In response, compensating for impacts to biological resources is not required by NEPA for application of a categorical exclusion, and DOE declines to adopt such a requirement. However, DOE considers all mitigation measures and best management practices that are incorporated into a proposed action as part of its decision whether to apply any categorical exclusion. This approach is supported by the CEQ final guidance on the "Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings of No Significant Impact" (CEQ Mitigation and Monitoring Guidance) (76 FR 3843; January 14, 2011). In its guidance, CEQ noted that "[m]any Federal agencies rely on mitigation to reduce adverse environmental impacts as part of the planning process for a project, incorporating mitigation as integral components of a proposed project design before making a determination about the significance of the project's environmental impacts. Such mitigation can lead to an environmentally preferred outcome and in some cases reduce the projected impacts of agency actions to below a threshold of significance. An example of mitigation measures that are typically included as part of the proposed action are agency standardized best management practices such as those developed to prevent storm water runoff or fugitive dust emissions at a construction site" (CEQ Mitigation and Monitoring Guidance).

The comment also recommended continued monitoring of environmental impacts resulting from categorically excluded actions. In response, ongoing monitoring is a part of many DOE programs, often in conjunction with an environmental management system, and private project proponents may include such monitoring (*e.g.*, for compliance with environmental protection requirements). However, when DOE is providing funding, its ability to require or oversee ongoing monitoring may be limited. In sum, DOE supports the objective of monitoring, but is not able to ensure that monitoring occurs in all circumstances.

The fourth recommendation in the comment was to include decommissioning/reclamation plans that restore impacted areas. DOE considers available information on decommissioning/reclamation plans as part of its decision whether to apply a categorical exclusion. Decommissioning and reclamation plans are not prerequisites for application of a categorical exclusion and, while they may be appropriate in some instances, DOE does not elect to require them in every situation.

DOE is not making any changes to categorical exclusions B5.15, B5.16, B5.17, B5.18, and B5.25 in response to the comments discussed above.

B5.15 Small-Scale Renewable Energy Research and Development and Pilot Projects

A comment from DOI (at page 3) asked for clarification regarding whether actions covered under the proposed categorical exclusion included both research and development projects and pilot projects located in previously disturbed or developed areas. DOE is modifying the categorical exclusion to more clearly state that both types of projects must be located in a previously disturbed or developed area. Therefore, DOE is changing the first sentence to read: "Small-scale renewable energy research and development projects and small-scale pilot projects, provided that the projects are located within a previously disturbed or developed area." For further information, see discussion of "Previously disturbed or developed area" in section IV.C.2. of this preamble. Another comment requested that the term "small-scale" be defined. For further information, see discussion of "small" and "small-scale" in section IV.C.3 of this preamble.

DOE received comments regarding the use of genetically engineered organisms, synthetic biology, noxious weeds, and non-native species, such as non-native algae, in projects that may be categorically excluded under this section of the rules. For further information, see discussion of "Genetically engineered organisms, synthetic biology, governmentally designated noxious weeds, or invasive species" in section IV.C.7 of this preamble.

For discussion of additional comments on this categorical exclusion, see "B5.15, B5.16, B5.17, B5.18, and B5.25—Renewable energy" above in this preamble.

B5.16 Solar Photovoltaic Systems

DOE received a comment from William Kirk Williams (at page 1) objecting to DOE's proposed categorical exclusion for solar photovoltaic projects because of the potentially large amount of land involved, associated impacts on ecosystems, and the economic interests of local communities who might be restricted from existing economic uses of Federal lands. The comment said that such projects should not be built without preparation of an environmental impact statement to consider alternatives. DOE agrees that some solar projects are large and appropriately analyzed in an environmental assessment or environmental impact statement. However, DOE is not making any changes in response to this comment because the categorical exclusion could only be applied to projects "on a building or other structure" or on land "generally less than 10 acres within a previously disturbed or developed area." At this scale, solar photovoltaic projects normally would not have the potential to cause significant impacts. For further information, see discussion of "Previously disturbed or developed area" in section IV.C.2 of this preamble.

Two comments (from Granite Construction Company (at pages 1–2) and Amonix (at pages 1–2)) asked DOE to increase the allowable footprint (acreage) for actions under this categorical exclusion to 100 acres when the projects would be located on heavily developed land such as mine or quarry sites. However, DOE does not have an adequate record to support a conclusion that larger photovoltaic systems, including up to 100 acres, normally would not have the potential for significant environmental impacts. For all proposed projects, including those at the mine and quarry locations, DOE would need to consider numerous site-specific factors, including the current state of animal and plant systems, reclamation, and alternative uses (*e.g.*, grazing). The scale of construction activities and the potential impacts for systems on 100 acres of land could be significantly different than those for a project located on 10 acres or less. DOE will continue to collect and review data and could revise or add a new categorical exclusion at a future time, if warranted. At a minimum, DOE would consider this during the next periodic review of its categorical exclusions.

A comment from William Kirk Williams (at page 1) also expressed concerns regarding negative impacts to species such as the sage grouse from activities under this categorical exclusion. Under integral element B(4)(ii), a provision applicable to all categorical exclusions in appendix B, DOE would not categorically exclude an action with the potential for significant impacts on threatened and endangered species, including Federal and state-

listed and proposed species and otherwise Federally protected species.

For discussion of additional comments on this categorical exclusion, see "B5.15, B5.16, B5.17, B5.18, and B5.25—Renewable energy" above in this preamble.

B5.17 Solar Thermal Systems

For DOE's response to comments on this categorical exclusion, see discussion of "B5.15, B5.16, B5.17, B5.18, and B5.25 Renewable energy" above in this preamble.

B5.18 Wind Turbines

In response to comments, DOE is making three changes to the categorical exclusion. A comment from Pacific Northwest National Laboratory (at page 2) asked for exclusionary wording stating that wind turbines would not be located in an established marine sanctuary or wildlife refuge. In response to the comment, DOE is limiting the categorical exclusion to land activities by adding the following sentence to the end of the categorical exclusion: "Covered actions include only those related to wind turbines to be installed on land." DOE also received a comment supporting the use of categorical exclusions for deepwater floating offshore wind energy projects. DOE does not currently have the experience to support expanding the categorical exclusion to include such projects, but this may change as DOE gains experience over time. Second, DOE received comments (*e.g.*, from Defenders of Wildlife (at page 4), Sandy Beranich (at page 2)) expressing uncertainty or concern as to the scope or size of a proposed action to which this categorical exclusion may apply, asking whether this categorical exclusion could cover the establishment of a wind farm. In order to clarify that DOE intends the categorical exclusion to apply to proposals for a limited number of wind turbines, DOE is changing the first sentence of the categorical exclusion to refer to a small number of wind turbines (generally not more than 2), which is the number of turbines generally analyzed in the environmental assessments and findings of no significant impact identified in the Technical Support Document. Third, DOE identified distances for siting turbines from air safety and navigational devices in nautical miles in its Notice of Proposed Rulemaking. DOE is adding the conversion to miles to ensure the limitation is readily understood by both experts and the general public.

In addition, upon further consideration, DOE is clarifying the examples of significant impacts to persons, so that the examples now read "(such as from shadow flicker and other visual effects, and noise)." DOE also is changing a condition that a proposed action "would not have the potential to cause significant impacts on bird or bat species" to "would not have the potential to cause significant impacts on bird or bat populations." The appropriate context for considering potential impacts is the local populations of birds and bats (including those nesting or foraging in, or flying through, the vicinity of the proposed project site).

DOE also received several other comments in response to which DOE is not making changes to the categorical exclusion. As noted previously (section IV.C.4), DOE received comments on its proposed use of "would not have the potential for significant impact" in a number of its categorical exclusions, including B5.18. In the context of categorical exclusion B5.18, comments asserted that the phrase would be open to interpretation or was too vague. DOE is including the limitations "would not have the potential to cause significant impacts on bird or bat populations" and "would not have the potential to cause significant impacts to persons (such as from shadow flicker and other visual effects, and noise)" in categorical exclusion B5.18 to highlight the types of potential impacts that a NEPA Compliance Officer must consider when reviewing a proposed action specific to wind turbines. As explained in section IV.C.4, this is consistent with CEQ's NEPA regulations and its Categorical Exclusion Guidance.

DOE received comments that expressed concern that the phrase "previously disturbed or developed area" was too vague and prone to interpretation. As indicated in its Notice of Proposed Rulemaking, DOE is limiting categorical exclusion B5.18 to actions located within previously disturbed or developed areas to avoid potential impacts to resources. For further information, see discussion of "Previously disturbed or developed area" in section IV.C.2 of this preamble.

DOE received a comment from William Kirk Williams (at page 1) that expressed concern over the scale of wind farms as too large and consuming too much land. Other comments (*e.g.*, from DOI (at page 3), Defenders of Wildlife (at page 4), Sandy Beranich (at page 2)) suggested limiting this categorical exclusion to a single turbine or specifying the scale in terms of acres. DOE is changing the categorical exclusion to limit covered actions to those that involve only "a small number of (generally not more than 2) * * *." This restriction, along with the condition that wind turbines must have a total height generally less than 200 feet and be sited within a previously disturbed or developed area, limits the potential scale of actions under this categorical exclusion to those that would not require large parcels of land. DOE has identified, in the Technical Support Document, multiple environmental assessments and findings of no significant impact that demonstrate DOE experience with wind turbine projects of the scale covered by this categorical exclusion. These environmental assessments and findings of no significant impact demonstrate that the construction of a small number of wind turbines normally does not result in large parcels of land being affected or significant environmental impacts. For further information, see discussion of "small" and "small-scale" in section IV.C.3 of this preamble.

Another comment (from National Wildlife Federation (at page 3)) suggested that DOE had not taken into consideration the "non-footprint" and potential cumulative impacts of wind turbines on bird, bat and wildlife behavior, migration pathways or habitat. A DOE NEPA Compliance Officer would consider potential direct, indirect, and cumulative impacts, as well as extraordinary circumstances when reviewing a proposed action and making a NEPA determination.

DOE received a comment from DOI (at page 3) asking for the basis for the limitation, as stated in the Notice of Proposed Rulemaking, that covered actions would be for commercially available wind turbines "with a total height generally less than 200 feet." This limitation is based on several considerations. DOE is choosing to limit this categorical exclusion to actions that are small-scale (*i.e.*, a small number of small turbines). The "generally less than 200 feet" limitation is intended to avoid potential conflicts with airports and aviation navigation aids, and to avoid potential commercial and military air safety issues.

The nature of potential impacts related to turbine height on visual or biological resources for any proposed action will vary depending on the nature of the site. DOE is including other limitations in B5.18 (*e.g.*, "would not have the potential to cause significant impacts on bird or bat populations") that better address issues related to visual, biological, and other resources in order to highlight the types of potential impacts that a NEPA Compliance Officer must consider when reviewing a proposed action specific to wind turbines.

DOE also received a comment from Defenders of Wildlife (at page 4) focused on best management practices and monitoring measures associated with categorical exclusion B5.18. A comment from William Kirk Williams (at page 1) expressed concern that B5.18 lacks a mechanism for requiring that actions covered under this categorical exclusion would incorporate best management practices. Both of these comments were related to using best management practices to reduce impacts to birds and bats under categorical exclusion B5.18. DOE considers all mitigation measures and best management practices that are incorporated into a proposed action as part of its decision whether to apply any categorical exclusion. This approach is supported by the CEQ Mitigation and Monitoring Guidance. DOE supports the objective of better design and planning to limit impacts to birds and bats and has therefore included a limitation in B5.18 that covered actions would "incorporate appropriate control technologies and best management practices." Whether or not such practices are included in the design of a wind turbine proposed action would be evident at the time that a DOE NEPA Compliance Officer considers the specific details of a proposed action.

The comment from Defenders of Wildlife (at page 5) also recommended continued monitoring of environmental impacts resulting from categorically excluded actions. In response, ongoing monitoring is a part of many DOE programs, often in conjunction with an environmental management system, and private project proponents may include such monitoring (*e.g.*, for compliance with environmental protection requirements). However, when DOE is providing funding, its ability to require or oversee ongoing monitoring may be limited, due to factors such as the terms of the financial award and the extent of Federal control over the lifetime of the project. In sum, DOE supports the objective of monitoring but is not able to ensure that monitoring occurs in all circumstances.

Several comments (*e.g.*, from DOI (at page 3), William Kirk Williams (at page 1)) raised issues related to impacts to biological resources, namely on impacts to bird and bat species. A comment from DOI (at page 3) asked DOE to describe "how the determination [would be] made that a significant number of birds or bats would not be affected." Because a determination of significance under NEPA depends on the context and intensity of an individual proposal, potential significance of the impacts from wind turbines on birds and bats is site-specific. At the time that a NEPA Compliance Officer considers applying this categorical exclusion to a proposed action, DOE would determine significance of impacts on birds and bats based on the specific site conditions of the proposed wind turbine(s).

A second comment (from William Kirk Williams (at page 1)) pointed out that wind turbines kill birds, and therefore, constitute a violation of the Migratory Bird Treaty Act. DOE agrees that impacts to birds are an important concern associated with this renewable technology, and DOE is modifying the integral elements applicable to appendix B categorical exclusions by adding that a proposal must be in compliance with the Bald and Golden Eagle Protection Act and the Migratory Bird Treaty Act. As indicated in its Notice of Proposed Rulemaking, DOE is also including a limitation that the action not have the potential to cause significant impacts on bird or bat populations, so that a NEPA Compliance Officer must consider the impact on these populations specifically when reviewing a proposed action to determine whether it fits this categorical exclusion.

Another comment (from Sandy Beranich (at page 2)) requested that DOE include a requirement that a covered action under categorical exclusion B5.18 would require agreement from the U.S. Fish and Wildlife Service for the size and location. Under integral element B(4)(ii), applicable to all categorical exclusions in appendix B, DOE would not categorically exclude an action with the potential for significant impacts on threatened and endangered species, including Federal and state-listed and proposed species and otherwise Federally protected species. Further, DOE consults with other agencies, as required. While the U.S. Fish and Wildlife Service has some authority related to the protection of such species, it does not have statutory or regulatory authority for siting wind turbines generally. The authority for siting wind turbines typically rests with state and/or local governments that make decisions with regard to land use, zoning, or other natural resource uses. Thus, DOE is not making any changes to categorical exclusion B5.18 based on this comment.

A comment from National Wildlife Federation (at page 3) requested that DOE include a specific requirement that wind turbines must not be sited in migration corridors or pathways, habitat areas, or areas where birds concentrate, such as wetlands or lakes. As indicated in its Notice of Proposed Rulemaking, DOE is including a limitation that covered actions "would be in accordance with applicable requirements (such as local land use and zoning requirements) in the proposed project area." DOE clarifies that this could include, but is not limited to, State, local or other requirements regarding the protection of special or sensitive species, migration pathways, and habitats. Therefore, DOE is not making a change based on this comment.

Another comment from National Wildlife Federation (at page 3) suggested that DOE include a requirement that the actions covered be in accordance with a municipal, state, or Federal wind turbine siting guideline such as the U.S. Fish and Wildlife Service, *Draft Land-Based Wind Energy Guidelines* (April 2011). The U.S. Fish and Wildlife Service has since issued revised draft guidelines (July 2011) and continues related discussions with the interested public and other Federal agencies. DOE will continue following the development of these guidelines and considering how to most appropriately apply them to its activities. However, DOE does not find it appropriate to make conformance to the guidelines a condition of applying a categorical exclusion. The guidelines are still being developed, and the U.S. Fish and Wildlife Service does not consider them mandatory at this time. Thus, DOE is not making any changes to categorical exclusion B5.18 based on this comment.

For discussion of additional comments on this categorical exclusion, see "B5.15, B5.16, B5.17, B5.18, and B5.25—Renewable energy" above in this preamble.

B5.19 Ground Source Heat Pumps

After further consideration, DOE is making two changes to the categorical exclusion. The first is to address the potential for a ground source heat pump system to allow cross-contamination between aquifers, during the construction or operation of the heat pump system. The second is to correct a typographical error; DOE intended to say "school or community center" rather than "school and community center." Therefore, DOE is changing the first sentence of the categorical exclusion to read: "The installation, modification, operation, and removal of commercially available small-scale ground source heat pumps to support operations in single facilities (such as a school or community center) or contiguous facilities (such as an office complex) (1) only where (a) major associated activities (such as drilling and discharge) are regulated, and (b) appropriate leakage and contaminant

control measures would be in place (including for cross-contamination between aquifers) * * *."

B5.20 Biomass Power Plants

DOE received comments (*e.g.*, from National Wildlife Federation (at page 4) and Center for Food Safety on behalf of itself and 3 other organizations (at page 5)) expressing concern about the impacts of biomass used in energy production. These concerns included impacts to wildlife habitat from the conversion of natural forests to monocultures for biomass production and the use of experimental biomass technologies employing genetically engineered organisms. DOE received a comment from Center for Food Safety on behalf of itself and 3 other organizations (at page 5) stating that biomass harvesting (or sourcing) could result in widespread forest destruction and soil degradation. Another comment (from National Wildlife Federation (at page 4)) suggested that biomass be certified by the Forest Stewardship Council or the Council for Sustainable Biomass Production to address the impact of biomass sourcing on forest stewardship and sustainability. Comments from Center for Food Safety on behalf of itself and 3 other organizations (at page 5) expressed concern about significant air pollution that could result from biomass combustion, when compared to other fuels. Another comment (from Friends of the Earth (at pages 1–2) and Center for Food Safety on behalf of itself and 3 other organizations (at page 1)) stated that this categorical exclusion should be rejected; because its use could cause significant impacts; DOE has determined that this categorical exclusion is appropriate, in part, because of the requirement to consider extraordinary circumstances.

A DOE NEPA Compliance Officer would evaluate the size and output of proposed biomass power plants to determine whether the proposals meet the integral elements of the categorical exclusion (listed in appendix B, paragraph (4)) and whether there are any associated extraordinary circumstances that would affect the significance of impacts, including impacts to wildlife and habitat. In DOE's experience, the limitations on the size and energy output of covered biomass power plants ensure that any covered action would not consume quantities of biomass that could foreseeably impact soil quality or forest sustainability, nor would such small-scale projects result in the conversion of natural forests to monocultures of biomass crops. Therefore, DOE is not adding specific restrictions on biomass sourcing, although an applicant's use of biomass certified as sustainable could be considered by the NEPA Compliance Officer in determining whether a categorical exclusion is appropriate. Regarding pollution that could result from biomass combustion, the categorical exclusion requires that any covered biomass power plant not affect the air quality attainment status of the area, not have the potential to cause a significant increase in the quantity or rate of air emissions, and not have the potential to cause significant impacts to water resources. For these reasons, DOE is retaining the proposed language in the categorical exclusion in the final rule.

A comment from Center for Food Safety on behalf of itself and 3 other organizations (at page 5) expressed concern about potential impacts on global climate change, stating that burning biomass can emit almost 1.5 times as much global warming pollution per unit of energy as coal, and that harvesting and transporting biomass would add to greenhouse gas emissions. A comment from the Blue Ridge Environmental Defense League (at page 1) stated that biomass energy source impacts are large, and that labeling such projects as "carbon neutral" is a mistaken concept without scientific basis. DOE considered these issues when developing the categorical exclusion. For example, DOE reviewed the Environmental Protection Agency's *Call for Information* regarding greenhouse gas emissions from bioenergy and other biogenic sources (75 FR 4117; July 15, 2010), which noted that the issue is complex and requested comments on analytical approaches that would apply to biomass facilities. Partly because of these issues, the categorical exclusion explicitly limits covered actions to those that would not have the potential to cause a significant increase in the quantity or rate of air emissions. DOE intends that "emissions" includes greenhouse gas emissions. Further, the small-scale biomass plants under this categorical exclusion would have correspondingly small-scale greenhouse gas emissions, and would produce power that may offset energy that otherwise might have been produced by fossil energy facilities, resulting in a potential for net beneficial impacts on climate change. Impacts from harvesting fuel would be limited by the size of the facility (and thus the total fuel needs) and consideration of factors such as existing land use plans.

DOE received comments regarding the use of genetically engineered organisms, synthetic biology, noxious weeds, and non-native species, such as non-native algae, in projects that may be categorically excluded under this section of the rules. For further information, see discussion of "Genetically engineered organisms, synthetic biology, governmentally designated noxious weeds, or invasive species" in section IV.C.7 of this preamble.

B5.21 Methane Gas Recovery and Utilization System

DOE received a comment from the Blue Ridge Environmental Defense League (at page 1) stating that methane gas recovery and utilization systems are either negative or associated with negative impacts. A DOE NEPA Compliance Officer would evaluate the size and output of proposed methane gas systems to determine whether the proposals meet the integral elements of the categorical exclusion (listed in appendix B, paragraph (4)) and whether there are any associated extraordinary circumstances that would affect the significance of impacts, including impacts to wildlife and habitat. The categorical exclusion also requires that any covered methane gas system not have the potential to cause a significant increase in the quantity or rate of air emissions, be in accordance with applicable requirements, and incorporate appropriate control technologies and best management practices. Because these measures would address potential significant impacts from these facilities, DOE is retaining the proposed language in the final categorical exclusion.

B5.24 Drop-in Hydroelectric Systems

A comment from Pacific Northwest National Laboratory (at page 2) suggested that limiting this categorical exclusion to stream and river areas upgradient of "natural" fish barriers is unduly restrictive because it excludes, for example, a small-scale hydroelectric system in an irrigation canal that uses existing fish screens or in a river system above an existing dam. DOE agrees that it is the effectiveness of the fish barrier—not whether the barrier is natural or man-made—that is relevant to the potential environmental impacts. Two important indicators of future effectiveness of an existing fish barrier are whether it is planned for removal (as are man-made barriers in several river systems) and whether it is to be modified to facilitate fish moving upstream past the barrier. Thus, DOE is revising the categorical exclusion to remove the word "natural" and to include a condition that the system "be

located up-gradient of an existing anadromous fish barrier that is not planned for removal and where fish passage retrofit is not planned. * * *"

Another comment from Pacific Northwest National Laboratory (at page 2) asked DOE to restrict this categorical exclusion to activities that would "not have the potential to cause impacts to threatened or endangered species" or significant impacts to fish or wildlife. Before making a categorical exclusion determination, a NEPA Compliance Officer must assess whether the proposed action will have the potential to cause significant impacts to listed or proposed threatened and endangered species. See integral element B(4)(ii). Thus, potential significant impacts to threatened and endangered species and fish and wildlife will be considered. The comment seeks inclusion of a higher standard—any potential impact to threatened and endangered species—which is not the correct standard required under NEPA. However, in response DOE is adding a reference to the integral element listed at B(4)(ii), which requires consideration of the impacts on threatened and endangered species, including Federal and state-listed and proposed species and otherwise Federally protected species.

DOE also received a comment from the Blue Ridge Environmental Defense League (at page 1) expressing concern with the proposed categorical exclusion for drop-in hydroelectric systems. DOE has concluded that such systems meeting the requirements of the categorical exclusion (*i.e.*, they would involve no storage or diversion of stream or river water, they would be located up-gradient of an existing anadromous fish barrier, and installation would be accomplished without use of heavy equipment and would involve no major construction or modification of stream or river channels) normally would not have the potential to cause significant impacts.

B5.25 Small-Scale Renewable Energy Research and Development and Pilot Projects in Aquatic Environments

To simplify the categorical exclusion, DOE is changing "salt water and freshwater" to "aquatic." Aquatic, as used herein, may refer to salt water, freshwater, or areas with shifting delineation between the two; this is not a substantive change. A comment from Pacific Northwest National Laboratory (at page 2) asked that additional restrictions be added to the categorical exclusion to preclude the installation of a small-scale renewable energy research and development or pilot project device, if the installation of the device would require significant dredging or if the device itself could interfere with shipping navigation. Under integral element B(1) (appendix B, paragraph (1)) to 10 CFR part 1021, to fit within the classes of actions under appendix B categorical exclusions, the proposed action must be one that would not "threaten a violation of applicable, statutory, or permit requirements for environment, safety, and health." Actions covered by this categorical exclusion would be subject to, and would often require permits under, Section 10 of the Rivers and Harbors Act, which regulates structures placed in "navigable waters of the United States," and Section 404 of the Clean Water Act, which regulates the discharge of dredged or fill material into waters of the United States. These regulations and statutes are expected to address the comment; therefore, DOE is not making any changes based on this comment.

A comment from the Ocean Renewable Energy Coalition (at page 4) asked if a transmission line connecting the proposed generation device to the grid would be covered under this categorical exclusion. Any action subject to a NEPA determination, whether an environmental impact statement, environmental assessment, or categorical exclusion, must include all necessary components of that action. In this case, the inclusion of one or more transmission lines connecting the generation device to the electrical grid as part of the proposed action would not prevent the application of the categorical exclusion, unless some aspect of the installation, character, or path of the line was inconsistent with one or more of the limitations described in the categorical exclusion or the integral elements, or if extraordinary circumstances were present.

Several comments (*e.g.*, from DOI (at page 3) and the Ocean Renewable Energy Coalition (at page 4)) asked that the term "small-scale" be defined, and one comment (from the Ocean Renewable Energy Coalition (at page 4)) suggested that a power limit of 5 megawatts be added to the categorical exclusion. Whether a proposal is small-scale would be determined by the NEPA Compliance Officer based on the context and intensity of the proposed action, which would be determined by the site conditions and nature of the proposal. Such limitations are more meaningful than a megawatt limit, as there is not necessarily a direct correlation between generation capacity and potential environmental impacts for the various technologies that could be addressed under this categorical exclusion. For additional discussion on the term "small-scale," see DOE's discussion of "small" and "small-scale" that appears in section IV.C.3 of this preamble.

A comment from the Ocean Renewable Energy Coalition (at page 5) suggested that DOE provide guidance as to the meaning of "biologically sensitive." Areas of high biological sensitivity are defined in the categorical exclusion to include "areas of known ecological importance, whale and marine mammal mating and calving/pupping areas, and fish and invertebrate spawning and nursery areas recognized as being limited or unique and vulnerable to perturbation; these areas can occur in bays, estuaries, near shore, and far offshore, and may vary seasonally." Information regarding areas of high biological sensitivity is available from local, state, and Federal regulatory and natural resource management agencies. It is not uncommon for a categorical exclusion determination to require some analysis to determine whether any extraordinary circumstances exist that would render the categorical inapplicable to a particular proposal. Determining the presence of conditions that would constitute an area of high biological sensitivity would be the responsibility of the DOE NEPA Compliance Officer, in consultation with the project proponent, and would necessarily occur before a categorical exclusion was granted.

A comment from Sandy Beranich (at page 2) noted that marine areas are too fragile for a variety of projects that could include the use of chemicals or invasive work and suggested that actions under this categorical exclusion warrant an environmental assessment level of analysis. Further, the comment requested that DOE limit the scale of projects under this categorical exclusion to allow only small projects in very specific areas. As indicated in its Notice of Proposed Rulemaking, DOE is limiting the scope and location of activities under this categorical exclusion to ensure that renewable energy research is conducted in a manner that would not have the potential to cause significant impacts.

DOE received a comment from the Ocean Renewable Energy Coalition (at page 5) noting that an offshore wave pilot project identified in a document cited in DOE's Technical Support Document for the Notice of Proposed Rulemaking was located in a marine sanctuary, yet was still deemed to have minimal impacts. In addition, a comment from Pacific Northwest National Laboratory (at page 2) suggested that many of the activities

described in categorical exclusion B3.16—a related categorical exclusion for activities in aquatic environments—should be allowed within the boundary of a marine sanctuary or wildlife refuge if conducted in a manner consistent with sanctuary goals and objectives. Therefore, DOE is modifying categorical exclusion B5.25 (and B3.16) to now allow covered actions within, or having effects on, existing or proposed marine sanctuaries, wildlife refuges, or governmentally recognized areas of high biological sensitivity, if the action receives authorization from, or after consultation with, the responsible agency. The DOE NEPA Compliance Officer would take concerns from the responsible agency into account when considering whether to apply this categorical exclusion. For further discussion, see discussion of categorical exclusion B3.16, above.

DOE received a comment from National Wildlife Federation (at page 4) expressing strong support for "removing unnecessary barriers to the commercialization of deepwater offshore wind technology," and stating that "with siting screens, research and demonstration projects in these technologies will not have significant impacts." DOE does not currently have the experience to support expanding the categorical exclusion to include such projects, but this may change as DOE gains experience over time and will be considered when DOE conducts its next periodic review of its categorical exclusions. Another comment (from Friends of the Earth (at page 2) and Center for Food Safety on behalf of itself and 3 other organizations (at page 1)) stated that this categorical exclusion should be rejected, because its use could cause significant impacts; DOE has determined that this categorical exclusion is appropriate, in part, because of the requirement to consider extraordinary circumstances.

DOE received a comment from DOI (at page 2) suggesting that it discuss or consider impacts related to decommissioning of authorized temporary structures or devices under categorical exclusion B5.25. The comment expressed concern regarding impacts from both planned decommissioning and unplanned "cessation of operation" or failure. DOE agrees that potential impacts associated with decommissioning and similar activities would be appropriate to consider when determining whether a particular proposed action qualifies for a categorical exclusion. Another comment (from DOI (at page 3)) asked for clarification on what happens if a proposed action does not meet the conditions outlined in categorical exclusion B5.25. In response, if a condition is not met, then the DOE NEPA Compliance Officer would not apply this categorical exclusion and would prepare an environmental assessment or environmental impact statement, as appropriate. Another comment (from DOI (at page 3)) requested that DOE clarify the meaning of "the construction of permanent devices." DOE also received a comment from DOI (at page 2) expressing concern that it would categorically exclude proposed actions located in unsurveyed areas of the seafloor under categorical exclusions B3.16 and B5.25. See explanation under categorical exclusion B3.16, above.

DOE received comments regarding the use of genetically engineered organisms, synthetic biology, noxious weeds, and non-native species, such as non-native algae, in projects that may be categorically excluded under this section of the rules. For further information, see discussion of "Genetically engineered organisms, synthetic biology, governmentally designated noxious weeds, or invasive species" in section IV.C.7 of this preamble.

For discussion of additional comments on this categorical exclusion, see "B5.15, B5.16, B5.17, B5.18, and B5.25—Renewable energy" above in this preamble.

Categorical Exclusions Applicable to Environmental Restoration and Waste Management Activities (B6)

B6.1 Cleanup Actions

DOE received a comment from Tri-Valley CAREs (at page 4) that questioned the basis for finding that the proposed increase in the cost limitation (from approximately $5 million to approximately $10 million) and the proposed removal of the time limitation (5 years) from this categorical exclusion will not result in potentially significant impacts to the environment. In DOE's experience, in light of other limitations on the scope of this categorical exclusion and the integral elements, increasing the cost limit would not add greatly to the types of projects that would be covered by this categorical exclusion. The time for project implementation is indirectly affected by the cost limit; *e.g.*, a container removal operation would be limited by its total cost even without an explicit time limit. Further, based on DOE's experience, the amount of time that a cleanup action requires is not a reliable indicator of its potential environmental impacts.

DOE received a comment from Sandy Beranich (at page 2) that acknowledged that cleanup costs have increased since the categorical exclusion was first established, but questioned whether a $10 million cleanup could appropriately be considered "small-scale." The size of typical small-scale cleanup actions with which DOE has experience has not changed, nor have the environmental impacts resulting from these actions increased. However, the costs of completing these actions have increased due to inflation. Projects meeting the $10 million limit, along with the other limitations on the scope of the categorical exclusion, normally would not have the potential for significant impacts. For further information, see discussion of "small" and "small-scale" in section IV.C.3 of this preamble.

After further consideration, to clarify the cost limitation by accounting for inflation over time, DOE is inserting "(in 2011 dollars)" after "10 million dollars."

10. Appendix C and Appendix D

C7 Contracts, Policies, and Marketing and Allocation Plans for Electric Power

After further consideration, DOE will not explicitly refer to transmission in this class of actions; transmission activities are included in the contracts, policies, and marketing plans, or are covered primarily in other classes of actions, such as the group of categorical exclusions under B4. In addition, to improve clarity, DOE is removing the previously proposed condition that the new generation resource "would not be eligible for categorical exclusion under this part." DOE normally would not prepare an environmental assessment when a categorical exclusion would apply. Therefore, the condition is unnecessary and potentially confusing.

C8 Protection of Cultural Resources and Fish and Wildlife Habitat

DOE received a comment from Sandy Beranich (at page 2) asking what DOE means by "large-scale," a term that distinguishes this environmental assessment category from categorical exclusion B1.20 for "small-scale" proposals of this type. DOE NEPA Compliance Officers use their professional expertise and judgment to determine whether a proposal meets a categorical exclusion for "small-scale" activities when no additional limitation is specified. A proposal that a NEPA Compliance Officer does not consider small-scale under such an evaluation would fit within this environmental assessment category. For further information, see discussion of "small"

and "small-scale" in section IV.C.3 of this preamble. In addition, under the DOE NEPA regulations (10 CFR 1021.321), DOE may prepare an environmental assessment on any action at any time in order to assist agency planning and decisionmaking. DOE is retaining the proposed language in this class of action in the final rule.

C12 Energy System Demonstration Actions

DOE received a comment from the Chesapeake Bay Foundation (at page 6) that the scale of the project should be specified to clarify whether a project is covered in this "limited exclusion." The comment is noted, but classes of actions in appendix C are not categorical exclusions; they are categories for which an environmental assessment is normally prepared to provide a basis for determining whether to prepare an environmental impact statement or issue a finding of no significant impact. DOE is retaining the proposed language in this class of actions in the final rule.

Upon further consideration, DOE is adding decommissioning to the list of actions. For proposed new facilities, DOE normally would address siting construction, operation, and decommissioning in the same review under NEPA.

In addition, DOE has determined that the final sentence of C12 is unnecessary and, thus, is deleting the sentence. This deletion does not change the meaning or scope of the paragraph.

C15 Research and Development Incinerators and Nonhazardous Waste Incinerators

Upon further consideration, DOE is adding decommissioning to the list of actions. For proposed new facilities, DOE normally would address siting construction, operation, and decommissioning in the same review under NEPA.

D1 [Reserved: Strategic Systems]

After further consideration, DOE is removing this class of actions because the term "strategic systems" is no longer in use and the referenced Order no longer defines it. The term previously referred to "a single, stand-alone effort within a program mission area that is a primary means to advance the Department's strategic goals."

D7 Contracts, Policies, and Marketing and Allocation Plans for Electric Power

After further consideration, DOE will not explicitly refer to transmission in this class of actions; transmission activities are included in the contracts, policies, and marketing plans, or are covered primarily in other classes of actions, such as the group of categorical exclusions under B4.

V. Procedural Requirements

Review Under Executive Order 12866

Today's final rule has been determined not to be a significant regulatory action under Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

Review Under National Environmental Policy Act

In this rule, DOE establishes, modifies, and clarifies procedures for considering the environmental effects of DOE actions within DOE's decisionmaking process, thereby enhancing compliance with the letter and spirit of NEPA. The Council on Environmental Quality regulations do not direct agencies to prepare a NEPA analysis or document before establishing Agency procedures that supplement the CEQ regulations for implementing NEPA. Agencies are required to adopt NEPA procedures that establish specific criteria for, and identification of, three classes of actions: those that normally require preparation of an environmental impact statement; those that normally require preparation of an environmental assessment; and those that are categorically excluded from further NEPA review (40 CFR 1507.3(b)). Categorical exclusions are one part of those agency procedures, and therefore establishing categorical exclusions does not require preparation of a NEPA analysis or document. Agency NEPA procedures are procedural guidance to assist agencies in the fulfillment of agency responsibilities under NEPA, but are not the agency's final determination of what level of NEPA analysis is required for a particular proposed action. The requirements for establishing agency NEPA procedures are set forth at 40 CFR 1505.1 and 1507.3. The determination that establishing categorical exclusions does not require NEPA analysis and documentation has been upheld in *Heartwood, Inc.* v. *U.S. Forest Service*, 73 F. Supp. 2d 962, 972–73 (S.D. Ill. 1999), *aff'd*, 230 F.3d 947, 954–55 (7th Cir. 2000).

Review Under Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking" (67 FR 53461; August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process (68 FR 7990). DOE has made its procedures and policies available on the Office of the General Counsel's Web site: *http://energy.gov/gc* under GC Guidance/Opinions, Rulemaking Policy.

DOE reviewed today's final rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. This final rule revises DOE's categorical exclusions, and makes certain other changes, that will help reduce the cost and time associated with completing the environmental review for certain proposed actions.

In the Notice of Proposed Rulemaking, DOE tentatively certified that this rule would not have a significant economic impact on a substantial number of small entities and did not prepare a regulatory flexibility analysis for this rulemaking. DOE received no comments on the certification, and the factual basis for DOE's certification is unchanged. Thus, DOE maintains its certification that this rule would not have a significant economic impact on a substantial number of small entities. DOE transmitted the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration pursuant to 5 U.S.C. 605(b).

Review Under Paperwork Reduction Act

This rulemaking will impose no new information or record-keeping requirements. Accordingly, OMB clearance is not required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Review Under Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires Federal agencies to examine closely the impacts of regulatory actions on state, local, and tribal governments. Subsection 101(5) of title I of that law defines a Federal intergovernmental mandate to include any regulation that

would impose upon state, local, or tribal governments an enforceable duty, except a condition of Federal assistance or a duty arising from participating in a voluntary Federal program. Title II of that law requires each Federal agency to assess the effects of Federal regulatory actions on state, local, and tribal governments, in the aggregate, or to the private sector, other than to the extent such actions merely incorporate requirements specifically set forth in a statute. Section 202 of that title requires a Federal agency to perform a detailed assessment of the anticipated costs and benefits of any rule that includes a Federal mandate which may result in costs to state, local, or tribal governments, or to the private sector, of $100 million or more in any one year (adjusted annually for inflation). Section 204 of that title requires each agency that proposes a rule containing a significant Federal intergovernmental mandate to develop an effective process for obtaining meaningful and timely input from elected officers of state, local, and tribal governments.

This rule would amend DOE's existing regulations governing compliance with NEPA to better align DOE's regulations, particularly its categorical exclusions, with its current activities and recent experiences, and update the provisions with respect to current technologies and regulatory requirements. This rule would not result in the expenditure by state, local, and tribal governments in the aggregate, or by the private sector, of $100 million or more in any one year. Accordingly, no assessment or analysis is required under the Unfunded Mandates Reform Act of 1995.

Review Under Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

Review Under Executive Order 13132

Executive Order 13132, "Federalism" (64 FR 43255; August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt state law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the states and carefully assess the necessity for such actions. DOE has examined this rule and has determined that it would not preempt state law and 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. No further action is required by Executive Order 13132.

Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform" (61 FR 4729; February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or if it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the rule meets the relevant standards of Executive Order 12988.

Review Under Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB.

OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed this rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

Review Under Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355; May 22, 2001), requires Federal agencies to prepare and submit to OMB a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1)(i) 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) is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits for energy supply, distribution, and use. This rule would not have a significant adverse effect on the supply, distribution, or use of energy, and is therefore not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

Review Under Executive Order 12630

DOE has determined pursuant to Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights" (53 FR 8859; March 18, 1988), that this rule would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule prior to its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's final rule.

List of Subjects in 10 CFR Part 1021

Environmental impact statements.

Issued in Washington, DC, September 27, 2011.

Sean A. Lev,

Acting General Counsel.

For the reasons stated in the Preamble, DOE amends part 1021 of chapter X of title 10 of the Code of Federal Regulations as set forth below:

PART 1021—NATIONAL ENVIRONMENTAL POLICY ACT IMPLEMENTING PROCEDURES

■ 1. The authority citation for part 1021 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.*; 42 U.S.C. 4321 *et seq.*; 50 U.S.C. 2401 *et seq.*

■ 2. Section 1021.215 is amended by revising the fourth sentence in paragraph (d) to read as follows:

§ 1021.215 Applicant process.

* * * * *

(d) * * * The contractor shall provide a disclosure statement in accordance with 40 CFR 1506.5(c). * * *

■ 3. Section 1021.311 is amended by revising the first sentence in paragraph (d) and paragraph (f) to read as follows:

§ 1021.311 Notice of intent and scoping.

* * * * *

(d) DOE shall hold at least one public scoping meeting as part of the public scoping process for a DOE EIS. * * *

* * * * *

(f) A public scoping process is optional for DOE supplemental EISs (40 CFR 1502.9(c)(4)). If DOE initiates a public scoping process for a supplemental EIS, the provisions of paragraphs (a) through (e) of this section shall apply.

■ 4. Section 1021.322 is amended by revising the last sentence of paragraph (f) to read as follows:

§ 1021.322 Findings of no significant impact.

* * * * *

(f) * * * A revised FONSI is subject to all provisions of this section.

■ 5. Section 1021.331 is amended by revising the first sentence in paragraph (b) to read as follows:

§ 1021.331 Mitigation action plans.

* * * * *

(b) In certain circumstances, as specified in § 1021.322(b)(1), DOE shall also prepare a Mitigation Action Plan for commitments to mitigations that are essential to render the impacts of the proposed action not significant. * * *

* * * * *

■ 6. Subpart D of part 1021 is revised to read as follows:

Subpart D—Typical Classes of Actions

Sec.

Subpart D—Typical Classes of Actions

§ 1021.400 Level of NEPA review.

(a) This subpart identifies DOE actions that normally:

(1) Do not require preparation of either an EIS or an EA (are categorically excluded from preparation of either document) (appendices A and B to this subpart D);

(2) Require preparation of an EA, but not necessarily an EIS (appendix C to this subpart D); or

(3) Require preparation of an EIS (appendix D to this subpart D).

(b) Any completed, valid NEPA review does not have to be repeated, and no completed NEPA documents need to be redone by reasons of these regulations, except as provided in § 1021.314.

(c) If a DOE proposal is encompassed within a class of actions listed in the appendices to this subpart D, DOE shall proceed with the level of NEPA review indicated for that class of actions, unless there are extraordinary circumstances related to the specific proposal that may affect the significance of the environmental effects of the proposal.

(d) If a DOE proposal is not encompassed within the classes of actions listed in the appendices to this subpart D, or if there are extraordinary circumstances related to the proposal that may affect the significance of the environmental effects of the proposal, DOE shall either:

(1) Prepare an EA and, on the basis of that EA, determine whether to prepare an EIS or a FONSI; or

(2) Prepare an EIS and ROD.

§ 1021.410 Application of categorical exclusions (classes of actions that normally do not require EAs or EISs).

(a) The actions listed in appendices A and B to this subpart D are classes of actions that DOE has determined do not individually or cumulatively have a significant effect on the human environment (categorical exclusions).

(b) To find that a proposal is categorically excluded, DOE shall determine the following:

(1) The proposal fits within a class of actions that is listed in appendix A or B to this subpart D;

(2) There are no extraordinary circumstances related to the proposal that may affect the significance of the environmental effects of the proposal. Extraordinary circumstances are unique situations presented by specific proposals, including, but not limited to, scientific controversy about the environmental effects of the proposal; uncertain effects or effects involving unique or unknown risks; and unresolved conflicts concerning alternative uses of available resources; and

(3) The proposal has not been segmented to meet the definition of a categorical exclusion. Segmentation can occur when a proposal is broken down into small parts in order to avoid the appearance of significance of the total action. The scope of a proposal must include the consideration of connected and cumulative actions, that is, the proposal is not connected to other actions with potentially significant impacts (40 CFR 1508.25(a)(1)), is not related to other actions with individually insignificant but cumulatively significant impacts (40 CFR 1508.27(b)(7)), and is not precluded by 40 CFR 1506.1 or § 1021.211 of this part concerning limitations on actions during EIS preparation.

(c) All categorical exclusions may be applied by any organizational element of DOE. The sectional divisions in appendix B to this subpart D are solely for purposes of organization of that appendix and are not intended to be limiting.

(d) A class of actions includes activities foreseeably necessary to proposals encompassed within the class of actions (such as award of implementing grants and contracts, site preparation, purchase and installation of equipment, and associated transportation activities).

(e) Categorical exclusion determinations for actions listed in appendix B shall be documented and made available to the public by posting online, generally within two weeks of the determination, unless additional time is needed in order to review and protect classified information, "confidential business information," or other information that DOE would not disclose pursuant to the Freedom of Information Act (FOIA) (5 U.S.C. 552).

Posted categorical exclusion determinations shall not disclose classified information, "confidential business information," or other information that DOE would not disclose pursuant to FOIA. (See also 10 CFR 1021.340.)

(f) Proposed recurring activities to be undertaken during a specified time period, such as routine maintenance activities for a year, may be addressed in a single categorical exclusion determination after considering the potential aggregated impacts.

(g) The following clarifications are provided to assist in the appropriate application of categorical exclusions that employ the terms or phrases:

(1) "Previously disturbed or developed" refers to land that has been changed such that its functioning ecological processes have been and remain altered by human activity. The phrase encompasses areas that have been transformed from natural cover to non-native species or a managed state, including, but not limited to, utility and electric power transmission corridors and rights-of-way, and other areas where active utilities and currently used roads are readily available.

(2) DOE considers terms such as "small" and "small-scale" in the context of the particular proposal, including its proposed location. In assessing whether a proposed action is small, in addition to the actual magnitude of the proposal, DOE considers factors such as industry norms, the relationship of the proposed action to similar types of development in the vicinity of the proposed action, and expected outputs of emissions or waste. When considering the physical size of a proposed facility, for example, DOE would review the surrounding land uses, the scale of the proposed facility relative to existing development, and the capacity of existing roads and other infrastructure to support the proposed action.

Appendix A to Subpart D of Part 1021—Categorical Exclusions Applicable to General Agency Actions

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A1 Routine DOE business actions

Routine actions necessary to support the normal conduct of DOE business limited to administrative, financial, and personnel actions.

A2 Clarifying or administrative contract actions

Contract interpretations, amendments, and modifications that are clarifying or administrative in nature.

A3 Certain actions by Office of Hearings and Appeals

Adjustments, exceptions, exemptions, appeals and stays, modifications, or rescissions of orders issued by the Office of Hearings and Appeals.

A4 Interpretations and rulings for existing regulations

Interpretations and rulings with respect to existing regulations, or modifications or rescissions of such interpretations and rulings.

A5 Interpretive rulemakings with no change in environmental effect

Rulemakings interpreting or amending an existing rule or regulation that does not change the environmental effect of the rule or regulation being amended.

A6 Procedural rulemakings

Rulemakings that are strictly procedural, including, but not limited to, rulemaking (under 48 CFR chapter 9) establishing procedures for technical and pricing proposals and establishing contract clauses and contracting practices for the purchase of goods and services, and rulemaking (under 10 CFR part 600) establishing application and review procedures for, and administration, audit, and closeout of, grants and cooperative agreements.

A7 [Reserved]

A8 Awards of certain contracts

Awards of contracts for technical support services, management and operation of a government-owned facility, and personal services.

A9 Information gathering, analysis, and dissemination

Information gathering (including, but not limited to, literature surveys, inventories, site visits, and audits), data analysis (including, but not limited to, computer modeling), document preparation (including, but not limited to, conceptual design, feasibility studies, and analytical energy supply and demand studies), and information dissemination (including, but not limited to, document publication and distribution, and classroom training and informational programs), but not including site characterization or environmental monitoring. (See also B3.1 of appendix B to this subpart.)

A10 Reports and recommendations on non-DOE legislation

Reports and recommendations on legislation or rulemaking that are not proposed by DOE.

A11 Technical advice and assistance to organizations

Technical advice and planning assistance to international, national, state, and local organizations.

A12 Emergency preparedness planning

Emergency preparedness planning activities, including, but not limited to, the designation of onsite evacuation routes.

A13 Procedural documents

Administrative, organizational, or procedural Policies, Orders, Notices, Manuals, and Guides.

A14 Approval of technical exchange arrangements

Approval of technical exchange arrangements for information, data, or personnel with other countries or international organizations (including, but not limited to, assistance in identifying and analyzing another country's energy resources, needs and options).

A15 International agreements for energy research and development

Approval of DOE participation in international "umbrella" agreements for cooperation in energy research and development activities that would not commit the U.S. to any specific projects or activities.

Appendix B to Subpart D of Part 1021—Categorical Exclusions Applicable to Specific Agency Actions

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B3. Categorical Exclusions Applicable to Site Characterization, Monitoring, and General Research

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B. Conditions That Are Integral Elements of the Classes of Actions in Appendix B

The classes of actions listed below include the following conditions as integral elements of the classes of actions. To fit within the classes of actions listed below, a proposal must be one that would not:

(1) Threaten a violation of applicable statutory, regulatory, or permit requirements for environment, safety, and health, or similar requirements of DOE or Executive Orders;

(2) Require siting and construction or major expansion of waste storage, disposal, recovery, or treatment facilities (including incinerators), but the proposal may include categorically excluded waste storage, disposal, recovery, or treatment actions or facilities;

(3) Disturb hazardous substances, pollutants, contaminants, or CERCLA-excluded petroleum and natural gas products that preexist in the environment such that there would be uncontrolled or unpermitted releases;

(4) Have the potential to cause significant impacts on environmentally sensitive resources. An environmentally sensitive resource is typically a resource that has been identified as needing protection through Executive Order, statute, or regulation by Federal, state, or local government, or a Federally recognized Indian tribe. An action may be categorically excluded if, although sensitive resources are present, the action would not have the potential to cause significant impacts on those resources (such as construction of a building with its foundation well above a sole-source aquifer or upland surface soil removal on a site that has wetlands). Environmentally sensitive resources include, but are not limited to:

(i) Property (such as sites, buildings, structures, and objects) of historic, archeological, or architectural significance designated by a Federal, state, or local government, Federally recognized Indian tribe, or Native Hawaiian organization, or property determined to be eligible for listing on the National Register of Historic Places;

(ii) Federally-listed threatened or endangered species or their habitat (including critical habitat) or Federally-proposed or candidate species or their habitat (Endangered Species Act); state-listed or state-proposed endangered or threatened

species or their habitat; Federally-protected marine mammals and Essential Fish Habitat (Marine Mammal Protection Act; Magnuson-Stevens Fishery Conservation and Management Act); and otherwise Federally-protected species (such as the Bald and Golden Eagle Protection Act or the Migratory Bird Treaty Act);

(iii) Floodplains and wetlands (as defined in 10 CFR 1022.4, "Compliance with Floodplain and Wetland Environmental Review Requirements: Definitions," or its successor);

(iv) Areas having a special designation such as Federally- and state-designated wilderness areas, national parks, national monuments, national natural landmarks, wild and scenic rivers, state and Federal wildlife refuges, scenic areas (such as National Scenic and Historic Trails or National Scenic Areas), and marine sanctuaries;

(v) Prime or unique farmland, or other farmland of statewide or local importance, as defined at 7 CFR 658.2(a), "Farmland Protection Policy Act: Definitions," or its successor;

(vi) Special sources of water (such as sole-source aquifers, wellhead protection areas, and other water sources that are vital in a region); and

(vii) Tundra, coral reefs, or rain forests; or

(5) Involve genetically engineered organisms, synthetic biology, governmentally designated noxious weeds, or invasive species, unless the proposed activity would be contained or confined in a manner designed and operated to prevent unauthorized release into the environment and conducted in accordance with applicable requirements, such as those of the Department of Agriculture, the Environmental Protection Agency, and the National Institutes of Health.

B1. Categorical Exclusions Applicable to Facility Operation

B1.1 Changing rates and prices

Changing rates for services or prices for products marketed by parts of DOE other than Power Marketing Administrations, and approval of rate or price changes for non-DOE entities, that are consistent with the change in the implicit price deflator for the Gross Domestic Product published by the Department of Commerce, during the period since the last rate or price change.

B1.2 Training exercises and simulations

Training exercises and simulations (including, but not limited to, firing-range training, small-scale and short-duration force-on-force exercises, emergency response training, fire fighter and rescue training, and decontamination and spill cleanup training) conducted under appropriately controlled conditions and in accordance with applicable requirements.

B1.3 Routine maintenance

Routine maintenance activities and custodial services for buildings, structures, rights-of-way, infrastructures (including, but not limited to, pathways, roads, and railroads), vehicles and equipment, and localized vegetation and pest control, during which operations may be suspended and resumed, provided that the activities would be conducted in a manner in accordance with applicable requirements. Custodial services are activities to preserve facility appearance, working conditions, and sanitation (such as cleaning, window washing, lawn mowing, trash collection, painting, and snow removal). Routine maintenance activities, corrective (that is, repair), preventive, and predictive, are required to maintain and preserve buildings, structures, infrastructures, and equipment in a condition suitable for a facility to be used for its designated purpose. Such maintenance may occur as a result of severe weather (such as hurricanes, floods, and tornados), wildfires, and other such events. Routine maintenance may result in replacement to the extent that replacement is in-kind and is not a substantial upgrade or improvement. In-kind replacement includes installation of new components to replace outmoded components, provided that the replacement does not result in a significant change in the expected useful life, design capacity, or function of the facility. Routine maintenance does not include replacement of a major component that significantly extends the originally intended useful life of a facility (for example, it does not include the replacement of a reactor vessel near the end of its useful life). Routine maintenance activities include, but are not limited to:

(a) Repair or replacement of facility equipment, such as lathes, mills, pumps, and presses;

(b) Door and window repair or replacement;

(c) Wall, ceiling, or floor repair or replacement;

(d) Reroofing;

(e) Plumbing, electrical utility, lighting, and telephone service repair or replacement;

(f) Routine replacement of high-efficiency particulate air filters;

(g) Inspection and/or treatment of currently installed utility poles;

(h) Repair of road embankments;

(i) Repair or replacement of fire protection sprinkler systems;

(j) Road and parking area resurfacing, including construction of temporary access to facilitate resurfacing, and scraping and grading of unpaved surfaces;

(k) Erosion control and soil stabilization measures (such as reseeding, gabions, grading, and revegetation);

(l) Surveillance and maintenance of surplus facilities in accordance with DOE Order 435.1, "Radioactive Waste Management," or its successor;

(m) Repair and maintenance of transmission facilities, such as replacement of conductors of the same nominal voltage, poles, circuit breakers, transformers, capacitors, crossarms, insulators, and downed powerlines, in accordance, where appropriate, with 40 CFR part 761 (Polychlorinated Biphenyls Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions) or its successor;

(n) Routine testing and calibration of facility components, subsystems, or portable equipment (such as control valves, in-core monitoring devices, transformers, capacitors, monitoring wells, lysimeters, weather stations, and flumes);

(o) Routine decontamination of the surfaces of equipment, rooms, hot cells, or other interior surfaces of buildings (by such activities as wiping with rags, using strippable latex, and minor vacuuming), and removal of contaminated intact equipment and other material (not including spent nuclear fuel or special nuclear material in nuclear reactors); and

(p) Removal of debris.

B1.4 Air conditioning systems for existing equipment

Installation or modification of air conditioning systems required for temperature control for operation of existing equipment.

B1.5 Existing steam plants and cooling water systems

Minor improvements to existing steam plants and cooling water systems (including, but not limited to, modifications of existing cooling towers and ponds), provided that the improvements would not: (1) Create new sources of water or involve new receiving waters; (2) have the potential to significantly alter water withdrawal rates; (3) exceed the permitted temperature of discharged water; or (4) increase introductions of, or involve new introductions of, hazardous substances, pollutants, contaminants, or CERCLA-excluded petroleum and natural gas products.

B1.6 Tanks and equipment to control runoff and spills

Installation or modification of retention tanks or small (normally under one acre) basins and associated piping and pumps for existing operations to control runoff or spills (such as under 40 CFR part 112). Modifications include, but are not limited to, installing liners or covers. (See also B1.33 of this appendix.)

B1.7 Electronic equipment

Acquisition, installation, operation, modification, and removal of electricity transmission control and monitoring devices for grid demand and response, communication systems, data processing equipment, and similar electronic equipment.

B1.8 Screened water intake and outflow structures

Modifications to screened water intake and outflow structures such that intake velocities and volumes and water effluent quality and volumes are consistent with existing permit limits.

B1.9 Airway safety markings and painting

Placement of airway safety markings on, painting of, and repair and in-kind replacement of lighting on powerlines and antenna structures, wind turbines, and similar structures in accordance with applicable requirements (such as Federal Aviation Administration standards).

B1.10 Onsite storage of activated material

Routine, onsite storage at an existing facility of activated equipment and material

(including, but not limited to, lead) used at that facility, to allow reuse after decay of radioisotopes with short half-lives.

B1.11 Fencing

Installation of fencing, including, but not limited to border marking, that would not have the potential to significantly impede wildlife population movement (including migration) or surface water flow.

B1.12 Detonotion or burning of explosives or propellants after testing

Outdoor detonation or burning of explosives or propellants that failed (duds), were damaged (such as by fracturing), or were otherwise not consumed in testing. Outdoor detonation or burning would be in areas designated and routinely used for those purposes under existing applicable permits issued by Federal, state, and local authorities (such as a permit for a RCRA miscellaneous unit (40 CFR part 264, subpart X)).

B1.13 Pathways, short access roads, and rail lines

Construction, acquisition, and relocation, consistent with applicable right-of-way conditions and approved land use or transportation improvement plans, of pedestrian walkways and trails, bicycle paths, small outdoor fitness areas, and short access roads and rail lines (such as branch and spur lines).

B1.14 Refueling of nuclear reactors

Refueling of operating nuclear reactors, during which operations may be suspended and then resumed.

B1.15 Support buildings

Siting, construction or modification, and operation of support buildings and support structures (including, but not limited to, trailers and prefabricated and modular buildings) within or contiguous to an already developed area (where active utilities and currently used roads are readily accessible). Covered support buildings and structures include, but are not limited to, those for office purposes; parking; cafeteria services; education and training; visitor reception; computer and data processing services; health services or recreation activities; routine maintenance activities; storage of supplies and equipment for administrative services and routine maintenance activities; security (such as security posts); fire protection; small-scale fabrication (such as machine shop activities), assembly, and testing of non-nuclear equipment or components; and similar support purposes, but exclude facilities for nuclear weapons activities and waste storage activities, such as activities covered in B1.10, B1.29, B1.35, B2.6, B6.2, B6.4, B6.5, B6.6, and B6.10 of this appendix.

B1.16 Asbestos removol

Removal of asbestos-containing materials from buildings in accordance with applicable requirements (such as 40 CFR part 61, "National Emission Standards for Hazardous Air Pollutants"; 40 CFR part 763, "Asbestos"; 29 CFR part 1910, subpart I, "Personal Protective Equipment"; and 29 CFR part 1926, "Safety and Health Regulations for Construction"; and appropriate state and local requirements, including certification of removal contractors and technicians).

B1.17 Polychlorinated biphenyl removal.

Removal of polychlorinated biphenyl (PCB)-containing items (including, but not limited to, transformers and capacitors), PCB-containing oils flushed from transformers, PCB-flushing solutions, and PCB-containing spill materials from buildings or other aboveground locations in accordance with applicable requirements (such as 40 CFR part 761).

B1.18 Woter supply wells

Siting, construction, and operation of additional water supply wells (or replacement wells) within an existing well field, or modification of an existing water supply well to restore production, provided that there would be no drawdown other than in the immediate vicinity of the pumping well, and the covered actions would not have the potential to cause significant long-term decline of the water table, and would not have the potential to cause significant degradation of the aquifer from the new or replacement well.

B1.19 Microwove, meteorologicol, ond radio towers

Siting, construction, modification, operation, and removal of microwave, radio communication, and meteorological towers and associated facilities, provided that the towers and associated facilities would not be in a governmentally designated scenic area (see B(4)(iv) of this appendix) unless otherwise authorized by the appropriate governmental entity.

B1.20 Protection of cultural resources, fish ond wildlife habitat

Small-scale activities undertaken to protect cultural resources (such as fencing, labeling, and flagging) or to protect, restore, or improve fish and wildlife habitat, fish passage facilities (such as fish ladders and minor diversion channels), or fisheries. Such activities would be conducted in accordance with an existing natural or cultural resource plan, if any.

B1.21 Noise abatement

Noise abatement measures (including, but not limited to, construction of noise barriers and installation of noise control materials).

B1.22 Relocation of buildings

Relocation of buildings (including, but not limited to, trailers and prefabricated buildings) to an already developed area (where active utilities and currently used roads are readily accessible).

B1.23 Demolition and disposal of buildings

Demolition and subsequent disposal of buildings, equipment, and support structures (including, but not limited to, smoke stacks and parking lot surfaces), provided that there would be no potential for release of substances at a level, or in a form, that could pose a threat to public health or the environment.

B1.24 Property transfers

Transfer, lease, disposition, or acquisition of interests in personal property (including, but not limited to, equipment and materials) or real property (including, but not limited to, permanent structures and land), provided that under reasonably foreseeable uses (1) there would be no potential for release of substances at a level, or in a form, that could pose a threat to public health or the environment and (2) the covered actions would not have the potential to cause a significant change in impacts from before the transfer, lease, disposition, or acquisition of interests.

B1.25 Real property transfers for cultural resources protection, hobitat preservation, and wildlife management

Transfer, lease, disposition, or acquisition of interests in land and associated buildings for cultural resources protection, habitat preservation, or fish and wildlife management, provided that there would be no potential for release of substances at a level, or in a form, that could pose a threat to public health or the environment.

B1.26 Smoll water treatment focilities

Siting, construction, expansion, modification, replacement, operation, and decommissioning of small (total capacity less than approximately 250,000 gallons per day) wastewater and surface water treatment facilities whose liquid discharges are externally regulated, and small potable water and sewage treatment facilities.

B1.27 Disconnection of utilities

Activities that are required for the disconnection of utility services (including, but not limited to, water, steam, telecommunications, and electrical power) after it has been determined that the continued operation of these systems is not needed for safety.

B1.28 Placing a facility in an environmentally safe condition

Minor activities that are required to place a facility in an environmentally safe condition where there is no proposed use for the facility. These activities would include, but are not limited to, reducing surface contamination, and removing materials, equipment or waste (such as final defueling of a reactor, where there are adequate existing facilities for the treatment, storage, or disposal of the materials, equipment or waste). These activities would not include conditioning, treatment, or processing of spent nuclear fuel, high-level waste, or special nuclear materials.

B1.29 Disposol focilities for construction and demolition waste

Siting, construction, expansion, modification, operation, and decommissioning of small (less than approximately 10 acres) solid waste disposal facilities for construction and demolition waste, in accordance with applicable requirements (such as 40 CFR part 257, "Criteria for Classification of Solid Waste Disposal Facilities and Practices," and 40 CFR part 61, "National Emission Standards

for Hazardous Air Pollutants") that would not release substances at a level, or in a form, that could pose a threat to public health or the environment.

B1.30 Transfer actions

Transfer actions, in which the predominant activity is transportation, provided that (1) the receipt and storage capacity and management capability for the amount and type of materials, equipment, or waste to be moved already exists at the receiving site and (2) all necessary facilities and operations at the receiving site are already permitted, licensed, or approved, as appropriate. Such transfers are not regularly scheduled as part of ongoing routine operations.

B1.31 Installation or relocation of machinery and equipment

Installation or relocation and operation of machinery and equipment (including, but not limited to, laboratory equipment, electronic hardware, manufacturing machinery, maintenance equipment, and health and safety equipment), provided that uses of the installed or relocated items are consistent with the general missions of the receiving structure. Covered actions include modifications to an existing building, within or contiguous to a previously disturbed or developed area, that are necessary for equipment installation and relocation. Such modifications would not appreciably increase the footprint or height of the existing building or have the potential to cause significant changes to the type and magnitude of environmental impacts.

B1.32 Traffic flow adjustments

Traffic flow adjustments to existing roads (including, but not limited to, stop sign or traffic light installation, adjusting direction of traffic flow, and adding turning lanes), and road adjustments (including, but not limited to, widening and realignment) that are within an existing right-of-way and consistent with approved land use or transportation improvement plans.

B1.33 Stormwater runoff control

Design, construction, and operation of control practices to reduce stormwater runoff and maintain natural hydrology. Activities include, but are not limited to, those that reduce impervious surfaces (such as vegetative practices and use of porous pavements), best management practices (such as silt fences, straw wattles, and fiber rolls), and use of green infrastructure or other low impact development practices (such as cisterns and green roofs).

B1.34 Lead-based paint containment, removal, and disposal

Containment, removal, and disposal of lead-based paint in accordance with applicable requirements (such as provisions relating to the certification of removal contractors and technicians at 40 CFR part 745, "Lead-Based Paint Poisoning Prevention In Certain Residential Structures").

B1.35 Drop-off, collection, and transfer facilities for recyclable materials

Siting, construction, modification, and operation of recycling or compostable material drop-off, collection, and transfer stations on or contiguous to a previously disturbed or developed area and in an area where such a facility would be consistent with existing zoning requirements. The stations would have appropriate facilities and procedures established in accordance with applicable requirements for the handling of recyclable or compostable materials and household hazardous waste (such as paint and pesticides). Except as specified above, the collection of hazardous waste for disposal and the processing of recyclable or compostable materials are not included in this class of actions.

B1.36 Determinations of excess real property

Determinations that real property is excess to the needs of DOE and, in the case of acquired real property, the subsequent reporting of such determinations to the General Services Administration or, in the case of lands withdrawn or otherwise reserved from the public domain, the subsequent filing of a notice of intent to relinquish with the Bureau of Land Management, Department of the Interior. Covered actions would not include disposal of real property.

B2. Categorical Exclusions Applicable to Safety and Health

B2.1 Workplace enhancements

Modifications within or contiguous to an existing structure, in a previously disturbed or developed area, to enhance workplace habitability (including, but not limited to, installation or improvements to lighting, radiation shielding, or heating/ventilating/air conditioning and its instrumentation, and noise reduction).

B2.2 Building and equipment instrumentation

Installation of, or improvements to, building and equipment instrumentation (including, but not limited to, remote control panels, remote monitoring capability, alarm and surveillance systems, control systems to provide automatic shutdown, fire detection and protection systems, water consumption monitors and flow control systems, announcement and emergency warning systems, criticality and radiation monitors and alarms, and safeguards and security equipment).

B2.3 Personnel safety and health equipment

Installation of, or improvements to, equipment for personnel safety and health (including, but not limited to, eye washes, safety showers, radiation monitoring devices, fumehoods, and associated collection and exhaust systems), provided that the covered actions would not have the potential to cause a significant increase in emissions.

B2.4 Equipment qualification

Activities undertaken to (1) qualify equipment for use or improve systems reliability or (2) augment information on safety-related system components. These activities include, but are not limited to, transportation container qualification testing, crane and lift-gear certification or recertification testing, high efficiency particulate air filter testing and certification, stress tests (such as "burn-in" testing of electrical components and leak testing), and calibration of sensors or diagnostic equipment.

B2.5 Facility safety and environmental improvements

Safety and environmental improvements of a facility (including, but not limited to, replacement and upgrade of facility components) that do not result in a significant change in the expected useful life, design capacity, or function of the facility and during which operations may be suspended and then resumed. Improvements include, but are not limited to, replacement/upgrade of control valves, in-core monitoring devices, facility air filtration systems, or substation transformers or capacitors; addition of structural bracing to meet earthquake standards and/or sustain high wind loading; and replacement of aboveground or belowground tanks and related piping, provided that there is no evidence of leakage, based on testing in accordance with applicable requirements (such as 40 CFR part 265, "Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities" and 40 CFR part 280, "Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks"). These actions do not include rebuilding or modifying substantial portions of a facility (such as replacing a reactor vessel).

B2.6 Recovery of radioactive sealed sources

Recovery of radioactive sealed sources and sealed source-containing devices from domestic or foreign locations provided that (1) the recovered items are transported and stored in compliant containers, and (2) the receiving site has sufficient existing storage capacity and all required licenses, permits, and approvals.

B3. Categorical Exclusions Applicable to Site Characterization, Monitoring, and General Research

B3.1 Site characterization and environmental monitoring

Site characterization and environmental monitoring (including, but not limited to, siting, construction, modification, operation, and dismantlement and removal or otherwise proper closure (such as of a well) of characterization and monitoring devices, and siting, construction, and associated operation of a small-scale laboratory building or renovation of a room in an existing building for sample analysis). Such activities would be designed in conformance with applicable requirements and use best management practices to limit the potential effects of any resultant ground disturbance. Covered activities include, but are not limited to, site characterization and environmental monitoring under CERCLA and RCRA. (This class of actions excludes activities in aquatic environments. See B3.16 of this appendix for such activities.) Specific activities include, but are not limited to:

(a) Geological, geophysical (such as gravity, magnetic, electrical, seismic, radar, and

temperature gradient), geochemical, and engineering surveys and mapping, and the establishment of survey marks. Seismic techniques would not include large-scale reflection or refraction testing;

(b) Installation and operation of field instruments (such as stream-gauging stations or flow-measuring devices, telemetry systems, geochemical monitoring tools, and geophysical exploration tools);

(c) Drilling of wells for sampling or monitoring of groundwater or the vadose (unsaturated) zone, well logging, and installation of water-level recording devices in wells;

(d) Aquifer and underground reservoir response testing;

(e) Installation and operation of ambient air monitoring equipment;

(f) Sampling and characterization of water, soil, rock, or contaminants (such as drilling using truck- or mobile-scale equipment, and modification, use, and plugging of boreholes);

(g) Sampling and characterization of water effluents, air emissions, or solid waste streams;

(h) Installation and operation of meteorological towers and associated activities (such as assessment of potential wind energy resources);

(i) Sampling of flora or fauna; and

(j) Archeological, historic, and cultural resource identification in compliance with 36 CFR part 800 and 43 CFR part 7.

B3.2 Aviation activities

Aviation activities for survey, monitoring, or security purposes that comply with Federal Aviation Administration regulations.

B3.3 Research related to conservation of fish, wildlife, and cultural resources

Field and laboratory research, inventory, and information collection activities that are directly related to the conservation of fish and wildlife resources or to the protection of cultural resources, provided that such activities would not have the potential to cause significant impacts on fish and wildlife habitat or populations or to cultural resources.

B3.4 Transport packaging tests for radioactive or hazardous material

Drop, puncture, water-immersion, thermal, and fire tests of transport packaging for radioactive or hazardous materials to certify that designs meet the applicable requirements (such as 49 CFR 173.411 and 173.412 and 10 CFR 71.73).

B3.5 Tank car tests

Tank car tests under 49 CFR part 179 (including, but not limited to, tests of safety relief devices, pressure regulators, and thermal protection systems).

B3.6 Small-scale research and development, laboratory operations, and pilot projects

Siting, construction, modification, operation, and decommissioning of facilities for small-scale research and development projects; conventional laboratory operations (such as preparation of chemical standards and sample analysis); and small-scale pilot projects (generally less than 2 years) frequently conducted to verify a concept before demonstration actions, provided that construction or modification would be within or contiguous to a previously disturbed or developed area (where active utilities and currently used roads are readily accessible). Not included in this category are demonstration actions, meaning actions that are undertaken at a scale to show whether a technology would be viable on a larger scale and suitable for commercial deployment.

B3.7 New terrestrial infill exploratory and experimental wells

Siting, construction, and operation of new terrestrial infill exploratory and experimental (test) wells, for either extraction or injection use, in a locally characterized geological formation in a field that contains existing operating wells, properly abandoned wells, or unminable coal seams containing natural gas, provided that the site characterization has verified a low potential for seismicity, subsidence, and contamination of freshwater aquifers, and the actions are otherwise consistent with applicable best practices and DOE protocols, including those that protect against uncontrolled releases of harmful materials. Such wells may include those for brine, carbon dioxide, coalbed methane, gas hydrate, geothermal, natural gas, and oil. Uses for carbon sequestration wells include, but are not limited to, the study of saline formations, enhanced oil recovery, and enhanced coalbed methane extraction.

B3.8 Outdoor terrestrial ecological and environmental research

Outdoor terrestrial ecological and environmental research in a small area (generally less than 5 acres), including, but not limited to, siting, construction, and operation of a small-scale laboratory building or renovation of a room in an existing building for associated analysis. Such activities would be designed in conformance with applicable requirements and use best management practices to limit the potential effects of any resultant ground disturbance.

B3.9 Projects to reduce emissions and waste generation

Projects to reduce emissions and waste generation at existing fossil or alternative fuel combustion or utilization facilities, provided that these projects would not have the potential to cause a significant increase in the quantity or rate of air emissions. For this category of actions, "fuel" includes, but is not limited to, coal, oil, natural gas, hydrogen, syngas, and biomass; but "fuel" does not include nuclear fuel. Covered actions include, but are not limited to:

(a) Test treatment of the throughput product (solid, liquid, or gas) generated at an existing and fully operational fuel combustion or utilization facility;

(b) Addition or replacement of equipment for reduction or control of sulfur dioxide, oxides of nitrogen, or other regulated substances that requires only minor modification to the existing structures at an existing fuel combustion or utilization facility, for which the existing use remains essentially unchanged;

(c) Addition or replacement of equipment for reduction or control of sulfur dioxide, oxides of nitrogen, or other regulated substances that involves no permanent change in the quantity or quality of fuel burned or used and involves no permanent change in the capacity factor of the fuel combustion or utilization facility; and

(d) Addition or modification of equipment for capture and control of carbon dioxide or other regulated substances, provided that adequate infrastructure is in place to manage such substances.

B3.10 Particle accelerators

Siting, construction, modification, operation, and decommissioning of particle accelerators, including electron beam accelerators, with primary beam energy less than approximately 100 million electron volts (MeV) and average beam power less than approximately 250 kilowatts (kW), and associated beamlines, storage rings, colliders, and detectors, for research and medical purposes (such as proton therapy), and isotope production, within or contiguous to a previously disturbed or developed area (where active utilities and currently used roads are readily accessible), or internal modification of any accelerator facility regardless of energy, that does not increase primary beam energy or current. In cases where the beam energy exceeds 100 MeV, the average beam power must be less than 250 kW, so as not to exceed an average current of 2.5 milliamperes (mA).

B3.11 Outdoor tests and experiments on materials and equipment components

Outdoor tests and experiments for the development, quality assurance, or reliability of materials and equipment (including, but not limited to, weapon system components) under controlled conditions. Covered actions include, but are not limited to, burn tests (such as tests of electric cable fire resistance or the combustion characteristics of fuels), impact tests (such as pneumatic ejector tests using earthen embankments or concrete slabs designated and routinely used for that purpose), or drop, puncture, water-immersion, or thermal tests. Covered actions would not involve source, special nuclear, or byproduct materials, except encapsulated sources manufactured to applicable standards that contain source, special nuclear, or byproduct materials may be used for nondestructive actions such as detector/sensor development and testing and first responder field training.

B3.12 Microbiological and biomedical facilities

Siting, construction, modification, operation, and decommissioning of microbiological and biomedical diagnostic, treatment and research facilities (excluding Biosafety Level-3 and Biosafety Level-4), in accordance with applicable requirements and best practices (such as Biosafety in Microbiological and Biomedical Laboratories, 5th Edition, Dec. 2009, U.S. Department of Health and Human Services) including, but not limited to, laboratories, treatment areas, offices, and storage areas, within or contiguous to a previously disturbed or developed area (where active utilities and

currently used roads are readily accessible). Operation may include the purchase, installation, and operation of biomedical equipment (such as commercially available cyclotrons that are used to generate radioisotopes and radiopharmaceuticals, and commercially available biomedical imaging and spectroscopy instrumentation).

B3.13 Magnetic fusion experiments

Performing magnetic fusion experiments that do not use tritium as fuel, within existing facilities (including, but not limited to, necessary modifications).

B3.14 Small-scale educational facilities

Siting, construction, modification, operation, and decommissioning of small-scale educational facilities (including, but not limited to, conventional teaching laboratories, libraries, classroom facilities, auditoriums, museums, visitor centers, exhibits, and associated offices) within or contiguous to a previously disturbed or developed area (where active utilities and currently used roads are readily accessible). Operation may include, but is not limited to, purchase, installation, and operation of equipment (such as audio/visual and laboratory equipment) commensurate with the educational purpose of the facility.

B3.15 Small-scale indoor research and development projects using nanoscale materials

Siting, construction, modification, operation, and decommissioning of facilities for indoor small-scale research and development projects and small-scale pilot projects using nanoscale materials in accordance with applicable requirements (such as engineering, worker safety, procedural, and administrative regulations) necessary to ensure the containment of any hazardous materials. Construction and modification activities would be within or contiguous to a previously disturbed or developed area (where active utilities and currently used roads are readily accessible).

B3.16 Research activities in aquatic environments

Small-scale, temporary surveying, site characterization, and research activities in aquatic environments, limited to:

(a) Acquisition of rights-of-way, easements, and temporary use permits;

(b) Installation, operation, and removal of passive scientific measurement devices, including, but not limited to, antennae, tide gauges, flow testing equipment for existing wells, weighted hydrophones, salinity measurement devices, and water quality measurement devices;

(c) Natural resource inventories, data and sample collection, environmental monitoring, and basic and applied research, excluding (1) large-scale vibratory coring techniques and (2) seismic activities other than passive techniques; and

(d) Surveying and mapping.

These activities would be conducted in accordance with, where applicable, an approved spill prevention, control, and response plan and would incorporate appropriate control technologies and best management practices. None of the activities listed above would occur within the boundary of an established marine sanctuary or wildlife refuge, a governmentally proposed marine sanctuary or wildlife refuge, or a governmentally recognized area of high biological sensitivity, unless authorized by the agency responsible for such refuge, sanctuary, or area (or after consultation with the responsible agency, if no authorization is required). If the proposed activities would occur outside such refuge, sanctuary, or area and if the activities would have the potential to cause impacts within such refuge, sanctuary, or area, then the responsible agency shall be consulted in order to determine whether authorization is required and whether such activities would have the potential to cause significant impacts on such refuge, sanctuary, or area. Areas of high biological sensitivity include, but are not limited to, areas of known ecological importance, whale and marine mammal mating and calving/pupping areas, and fish and invertebrate spawning and nursery areas recognized as being limited or unique and vulnerable to perturbation; these areas can occur in bays, estuaries, near shore, and far offshore, and may vary seasonally. No permanent facilities or devices would be constructed or installed. Covered actions do not include drilling of resource exploration or extraction wells.

B4. Categorical Exclusions Applicable to Electrical Power and Transmission

B4.1 Contracts, policies, and marketing and allocation plans for electric power

Establishment and implementation of contracts, policies, and marketing and allocation plans related to electric power acquisition that involve only the use of the existing transmission system and existing generation resources operating within their normal operating limits.

B4.2 Export of electric energy

Export of electric energy as provided by Section 202(e) of the Federal Power Act over existing transmission systems or using transmission system changes that are themselves categorically excluded.

B4.3 Electric power marketing rate changes

Rate changes for electric power, power transmission, and other products or services provided by a Power Marketing Administration that are based on a change in revenue requirements if the operations of generation projects would remain within normal operating limits.

B4.4 Power marketing services and activities

Power marketing services and power management activities (including, but not limited to, storage, load shaping and balancing, seasonal exchanges, and other similar activities), provided that the operations of generating projects would remain within normal operating limits.

B4.5 Temporary adjustments to river operations

Temporary adjustments to river operations to accommodate day-to-day river fluctuations, power demand changes, fish and wildlife conservation program requirements, and other external events, provided that the adjustments would occur within the existing operating constraints of the particular hydrosystem operation.

B4.6 Additions and modifications to transmission facilities

Additions or modifications to electric power transmission facilities within a previously disturbed or developed facility area. Covered activities include, but are not limited to, switchyard rock grounding upgrades, secondary containment projects, paving projects, seismic upgrading, tower modifications, load shaping projects (such as the installation and use of flywheels and battery arrays), changing insulators, and replacement of poles, circuit breakers, conductors, transformers, and crossarms.

B4.7 Fiber optic cable

Adding fiber optic cables to transmission facilities or burying fiber optic cable in existing powerline or pipeline rights-of-way. Covered actions may include associated vaults and pulling and tensioning sites outside of rights-of-way in nearby previously disturbed or developed areas.

B4.8 Electricity transmission agreements

New electricity transmission agreements, and modifications to existing transmission arrangements, to use a transmission facility of one system to transfer power of and for another system, provided that no new generation projects would be involved and no physical changes in the transmission system would be made beyond the previously disturbed or developed facility area.

B4.9 Multiple use of powerline rights-of-way

Granting or denying requests for multiple uses of a transmission facility's rights-of-way (including, but not limited to, grazing permits and crossing agreements for electric lines, water lines, natural gas pipelines, communications cables, roads, and drainage culverts).

B4.10 Removal of electric transmission facilities

Deactivation, dismantling, and removal of electric transmission facilities (including, but not limited to, electric powerlines, substations, and switching stations) and abandonment and restoration of rights-of-way (including, but not limited to, associated access roads).

B4.11 Electric power substations and interconnection facilities

Construction or modification of electric power substations or interconnection facilities (including, but not limited to, switching stations and support facilities).

B4.12 Construction of powerlines

Construction of electric powerlines approximately 10 miles in length or less, or approximately 20 miles in length or less within previously disturbed or developed powerline or pipeline rights-of-way.

B4.13 Upgrading and rebuilding existing powerlines

Upgrading or rebuilding approximately 20 miles in length or less of existing electric powerlines, which may involve minor relocations of small segments of the powerlines.

B5. Categorical Exclusions Applicable to Conservation, Fossil, and Renewable Energy Activities

B5.1 Actions to conserve energy or water

(a) Actions to conserve energy or water, demonstrate potential energy or water conservation, and promote energy efficiency that would not have the potential to cause significant changes in the indoor or outdoor concentrations of potentially harmful substances. These actions may involve financial and technical assistance to individuals (such as builders, owners, consultants, manufacturers, and designers), organizations (such as utilities), and governments (such as state, local, and tribal). Covered actions include, but are not limited to weatherization (such as insulation and replacing windows and doors); programmed lowering of thermostat settings; placement of timers on hot water heaters; installation or replacement of energy efficient lighting; low-flow plumbing fixtures (such as faucets, toilets, and showerheads), heating, ventilation, and air conditioning systems, and appliances; installation of drip-irrigation systems; improvements in generator efficiency and appliance efficiency ratings; efficiency improvements for vehicles and transportation (such as fleet changeout); power storage (such as flywheels and batteries, generally less than 10 megawatt equivalent); transportation management systems (such as traffic signal control systems, car navigation, speed cameras, and automatic plate number recognition); development of energy-efficient manufacturing, industrial, or building practices; and small-scale energy efficiency and conservation research and development and small-scale pilot projects. Covered actions include building renovations or new structures, provided that they occur in a previously disturbed or developed area. Covered actions could involve commercial, residential, agricultural, academic, institutional, or industrial sectors. Covered actions do not include rulemakings, standard-settings, or proposed DOE legislation, except for those actions listed in B5.1(b) of this appendix.

(b) Covered actions include rulemakings that establish energy conservation standards for consumer products and industrial equipment, provided that the actions would not: (1) Have the potential to cause a significant change in manufacturing infrastructure (such as construction of new manufacturing plants with considerable associated ground disturbance); (2) involve significant unresolved conflicts concerning alternative uses of available resources (such as rare or limited raw materials); (3) have the potential to result in a significant increase in the disposal of materials posing significant risks to human health and the environment (such as RCRA hazardous wastes); or (4) have the potential to cause a significant increase in energy consumption in a state or region.

B5.2 Modifications to pumps and piping

Modifications to existing pump and piping configurations (including, but not limited to, manifolds, metering systems, and other instrumentation on such configurations conveying materials such as air, brine, carbon dioxide, geothermal system fluids, hydrogen gas, natural gas, nitrogen gas, oil, produced water, steam, and water). Covered modifications would not have the potential to cause significant changes to design process flow rates or permitted air emissions.

B5.3 Modification or abandonment of wells

Modification (but not expansion) or plugging and abandonment of wells, provided that site characterization has verified a low potential for seismicity, subsidence, and contamination of freshwater aquifers, and the actions are otherwise consistent with best practices and DOE protocols, including those that protect against uncontrolled releases of harmful materials. Such wells may include, but are not limited to, storage and injection wells for brine, carbon dioxide, coalbed methane, gas hydrate, geothermal, natural gas, and oil. Covered modifications would not be part of site closure.

B5.4 Repair or replacement of pipelines

Repair, replacement, upgrading, rebuilding, or minor relocation of pipelines within existing rights-of-way, provided that the actions are in accordance with applicable requirements (such as Army Corps of Engineers permits under section 404 of the Clean Water Act). Pipelines may convey materials including, but not limited to, air, brine, carbon dioxide, geothermal system fluids, hydrogen gas, natural gas, nitrogen gas, oil, produced water, steam, and water.

B5.5 Short pipeline segments

Construction and subsequent operation of short (generally less than 20 miles in length) pipeline segments conveying materials (such as air, brine, carbon dioxide, geothermal system fluids, hydrogen gas, natural gas, nitrogen gas, oil, produced water, steam, and water) between existing source facilities and existing receiving facilities (such as facilities for use, reuse, transportation, storage, and refining), provided that the pipeline segments are within previously disturbed or developed rights-of-way.

B5.6 Oil spill cleanup

Removal of oil and contaminated materials recovered in oil spill cleanup operations and disposal of these materials in accordance with applicable requirements (such as the National Oil and Hazardous Substances Pollution Contingency Plan).

B5.7 Import or export natural gas, with operational changes

Approvals or disapprovals of new authorizations or amendments of existing authorizations to import or export natural gas under section 3 of the Natural Gas Act that involve minor operational changes (such as changes in natural gas throughput, transportation, and storage operations) but not new construction.

B5.8 Import or export natural gas, with new cogeneration powerplant

Approvals or disapprovals of new authorizations or amendments of existing authorizations to import or export natural gas under section 3 of the Natural Gas Act that involve new cogeneration powerplants (as defined in the Powerplant and Industrial Fuel Use Act of 1978, as amended) within or contiguous to an existing industrial complex and requiring generally less than 10 miles of new natural gas pipeline or 20 miles within previously disturbed or developed rights-of-way.

B5.9 Temporary exemptions for electric powerplants

Grants or denials of temporary exemptions under the Powerplant and Industrial Fuel Use Act of 1978, as amended, for electric powerplants.

B5.10 Certain permanent exemptions for existing electric powerplants

For existing electric powerplants, grants or denials of permanent exemptions under the Powerplant and Industrial Fuel Use Act of 1978, as amended, other than exemptions under section 312(c) relating to cogeneration and section 312(b) relating to certain state or local requirements.

B5.11 Permanent exemptions allowing mixed natural gas and petroleum

For new electric powerplants, grants or denials of permanent exemptions from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended, to permit the use of certain fuel mixtures containing natural gas or petroleum.

B5.12 Workover of existing wells

Workover [operations to restore production, such as deepening, plugging back, pulling and resetting lines, and squeeze cementing) of existing wells (including, but not limited to, activities associated with brine, carbon dioxide, coalbed methane, gas hydrate, geothermal, natural gas, and oil) to restore functionality, provided that workover operations are restricted to the existing wellpad and do not involve any new site preparation or earthwork that would have the potential to cause significant impacts on nearby habitat; that site characterization has verified a low potential for seismicity, subsidence, and contamination of freshwater aquifers; and the actions are otherwise consistent with best practices and DOE protocols, including those that protect against uncontrolled releases of harmful materials.

B5.13 Experimental wells for injection of small quantities of carbon dioxide

Siting, construction, operation, plugging, and abandonment of experimental wells for the injection of small quantities of carbon dioxide (and other incidentally co-captured gases) in locally characterized, geologically secure storage formations at or near existing carbon dioxide sources to determine the suitability of the formations for large-scale sequestration, provided that (1) The characterization has verified a low potential for seismicity, subsidence, and

contamination of freshwater aquifers; (2) the wells are otherwise in accordance with applicable requirements, best practices, and DOE protocols, including those that protect against uncontrolled releases of harmful materials; and (3) the wells and associated drilling activities are sufficiently remote so that they would not have the potential to cause significant impacts related to noise and other vibrations. Wells may be used for enhanced oil or natural gas recovery or for secure storage of carbon dioxide in saline formations or other secure formations. Over the duration of a project, the wells would be used to inject, in aggregate, less than 500,000 tons of carbon dioxide into the geologic formation. Covered actions exclude activities in aquatic environments. (See B3.16 of this appendix for activities in aquatic environments.)

B5.14 Combined heat and power or cogeneration systems

Conversion to, replacement of, or modification of combined heat and power or cogeneration systems (the sequential or simultaneous production of multiple forms of energy, such as thermal and electrical energy, in a single integrated system) at existing facilities, provided that the conversion, replacement, or modification would not have the potential to cause a significant increase in the quantity or rate of air emissions and would not have the potential to cause significant impacts to water resources.

B5.15 Small-scale renewable energy research and development and pilot projects

Small-scale renewable energy research and development projects and small-scale pilot projects, provided that the projects are located within a previously disturbed or developed area. Covered actions would be in accordance with applicable requirements (such as local land use and zoning requirements) in the proposed project area and would incorporate appropriate control technologies and best management practices.

B5.16 Solar photovoltaic systems

The installation, modification, operation, and removal of commercially available solar photovoltaic systems located on a building or other structure (such as rooftop, parking lot or facility, and mounted to signage, lighting, gates, or fences), or if located on land, generally comprising less than 10 acres within a previously disturbed or developed area. Covered actions would be in accordance with applicable requirements (such as local land use and zoning requirements) in the proposed project area and would incorporate appropriate control technologies and best management practices.

B5.17 Solar thermal systems

The installation, modification, operation, and removal of commercially available small-scale solar thermal systems (including, but not limited to, solar hot water systems) located on or contiguous to a building, and if located on land, generally comprising less than 10 acres within a previously disturbed or developed area. Covered actions would be in accordance with applicable requirements (such as local land use and zoning requirements) in the proposed project area and would incorporate appropriate control technologies and best management practices.

B5.18 Wind turbines

The installation, modification, operation, and removal of a small number (generally not more than 2) of commercially available wind turbines, with a total height generally less than 200 feet (measured from the ground to the maximum height of blade rotation) that (1) Are located within a previously disturbed or developed area; (2) are located more than 10 nautical miles (about 11.5 miles) from an airport or aviation navigation aid; (3) are located more than 1.5 nautical miles (about 1.7 miles) from National Weather Service or Federal Aviation Administration Doppler weather radar; (4) would not have the potential to cause significant impacts on bird or bat populations; and (5) are sited or designed such that the project would not have the potential to cause significant impacts to persons (such as from shadow flicker and other visual effects, and noise). Covered actions would be in accordance with applicable requirements (such as local land use and zoning requirements) in the proposed project area and would incorporate appropriate control technologies and best management practices. Covered actions include only those related to wind turbines to be installed on land.

B5.19 Ground source heat pumps

The installation, modification, operation, and removal of commercially available small-scale ground source heat pumps to support operations in single facilities (such as a school or community center) or contiguous facilities (such as an office complex) (1) Only where (a) major associated activities (such as drilling and discharge) are regulated, and (b) appropriate leakage and contaminant control measures would be in place (including for cross-contamination between aquifers); (2) that would not have the potential to cause significant changes in subsurface temperature; and (3) would be located within a previously disturbed or developed area. Covered actions would be in accordance with applicable requirements (such as local land use and zoning requirements) in the proposed project area and would incorporate appropriate control technologies and best management practices.

B5.20 Biomass power plants

The installation, modification, operation, and removal of small-scale biomass power plants (generally less than 10 megawatts), using commercially available technology (1) Intended primarily to support operations in single facilities (such as a school and community center) or contiguous facilities (such as an office complex); (2) that would not affect the air quality attainment status of the area and would not have the potential to cause a significant increase in the quantity or rate of air emissions and would not have the potential to cause significant impacts to water resources; and (3) would be located within a previously disturbed or developed area. Covered actions would be in accordance with applicable requirements (such as local land use and zoning requirements) in the proposed project area and would incorporate appropriate control technologies and best management practices.

B5.21 Methane gas recovery and utilization systems

The installation, modification, operation, and removal of commercially available methane gas recovery and utilization systems installed within a previously disturbed or developed area on or contiguous to an existing landfill or wastewater treatment plant that would not have the potential to cause a significant increase in the quantity or rate of air emissions. Covered actions would be in accordance with applicable requirements (such as local land use and zoning requirements) in the proposed project area and would incorporate appropriate control technologies and best management practices.

B5.22 Alternative fuel vehicle fueling stations

The installation, modification, operation, and removal of alternative fuel vehicle fueling stations (such as for compressed natural gas, hydrogen, ethanol and other commercially available biofuels) on the site of a current or former fueling station, or within a previously disturbed or developed area within the boundaries of a facility managed by the owners of a vehicle fleet. Covered actions would be in accordance with applicable requirements (such as local land use and zoning requirements) in the proposed project area and would incorporate appropriate control technologies and best management practices.

B5.23 Electric vehicle charging stations

The installation, modification, operation, and removal of electric vehicle charging stations, using commercially available technology, within a previously disturbed or developed area. Covered actions are limited to areas where access and parking are in accordance with applicable requirements (such as local land use and zoning requirements) in the proposed project area and would incorporate appropriate control technologies and best management practices.

B5.24 Drop-in hydroelectric systems

The installation, modification, operation, and removal of commercially available small-scale, drop-in, run-of-the-river hydroelectric systems that would (1) Involve no water storage or water diversion from the stream or river channel where the system is installed and (2) not have the potential to cause significant impacts on water quality, temperature, flow, or volume. Covered systems would be located up-gradient of an existing anadromous fish barrier that is not planned for removal and where fish passage retrofit is not planned and where there would not be the potential for significant impacts to threatened or endangered species or other species of concern (as identified in B(4)(ii) of this appendix). Covered actions would involve no major construction or modification of stream or river channels, and the hydroelectric systems would be placed and secured in the channel without the use of heavy equipment. Covered actions would be in accordance with applicable requirements (such as local land use and

zoning requirements) in the proposed project area and would incorporate appropriate control technologies and best management practices.

B5.25 Small-scale renewable energy research and development and pilot projects in aquatic environments

Small-scale renewable energy research and development projects and small-scale pilot projects located in aquatic environments. Activities would be in accordance with, where applicable, an approved spill prevention, control, and response plan, and would incorporate appropriate control technologies and best management practices. Covered actions would not occur (1) Within areas of hazardous natural bottom conditions or (2) within the boundary of an established marine sanctuary or wildlife refuge, a governmentally proposed marine sanctuary or wildlife refuge, or a governmentally recognized area of high biological sensitivity, unless authorized by the agency responsible for such refuge, sanctuary, or area (or after consultation with the responsible agency, if no authorization is required). If the proposed activities would occur outside such refuge, sanctuary, or area and if the activities would have the potential to cause impacts within such refuge, sanctuary, or area, then the responsible agency shall be consulted in order to determine whether authorization is required and whether such activities would have the potential to cause significant impacts on such refuge, sanctuary, or area. Areas of high biological sensitivity include, but are not limited to, areas of known ecological importance, whale and marine mammal mating and calving/pupping areas, and fish and invertebrate spawning and nursery areas recognized as being limited or unique and vulnerable to perturbation; these areas can occur in bays, estuaries, near shore, and far offshore, and may vary seasonally. No permanent facilities or devices would be constructed or installed. Covered actions do not include drilling of resource exploration or extraction wells, use of large-scale vibratory coring techniques, or seismic activities other than passive techniques.

B6. Categorical Exclusions Applicable to Environmental Restoration and Waste Management Activities

B6.1 Cleanup actions

Small-scale, short-term cleanup actions, under RCRA, Atomic Energy Act, or other authorities, less than approximately 10 million dollars in cost (in 2011 dollars), to reduce risk to human health or the environment from the release or threat of release of a hazardous substance other than high-level radioactive waste and spent nuclear fuel, including treatment (such as incineration, encapsulation, physical or chemical separation, and compaction), recovery, storage, or disposal of wastes at existing facilities currently handling the type of waste involved in the action. These actions include, but are not limited to:

(a) Excavation or consolidation of contaminated soils or materials from drainage channels, retention basins, ponds, and spill areas that are not receiving contaminated surface water or wastewater, if surface water or groundwater would not collect and if such actions would reduce the spread of, or direct contact with, the contamination;

(b) Removal of bulk containers (such as drums and barrels) that contain or may contain hazardous substances, pollutants, contaminants, CERCLA-excluded petroleum or natural gas products, or hazardous wastes (designated in 40 CFR part 261 or applicable state requirements), if such actions would reduce the likelihood of spillage, leakage, fire, explosion, or exposure to humans, animals, or the food chain;

(c) Removal of an underground storage tank including its associated piping and underlying containment systems in accordance with applicable requirements (such as RCRA, subtitle I; 40 CFR part 265, subpart J; and 40 CFR part 280, subparts F and G) if such action would reduce the likelihood of spillage, leakage, or the spread of, or direct contact with, contamination;

(d) Repair or replacement of leaking containers;

(e) Capping or other containment of contaminated soils or sludges if the capping or containment would not unduly limit future groundwater remediation and if needed to reduce migration of hazardous substances, pollutants, contaminants, or CERCLA-excluded petroleum and natural gas products into soil, groundwater, surface water, or air;

(f) Drainage or closing of man-made surface impoundments if needed to maintain the integrity of the structures;

(g) Confinement or perimeter protection using dikes, trenches, ditches, or diversions, or installing underground barriers, if needed to reduce the spread of, or direct contact with, the contamination;

(h) Stabilization, but not expansion, of berms, dikes, impoundments, or caps if needed to maintain integrity of the structures;

(i) Drainage controls (such as run-off or run-on diversion) if needed to reduce offsite migration of hazardous substances, pollutants, contaminants, or CERCLA-excluded petroleum or natural gas products or to prevent precipitation or run-off from other sources from entering the release area from other areas;

(j) Segregation of wastes that may react with one another or form a mixture that could result in adverse environmental impacts;

(k) Use of chemicals and other materials to neutralize the pH of wastes;

(l) Use of chemicals and other materials to retard the spread of the release or to mitigate its effects if the use of such chemicals would reduce the spread of, or direct contact with, the contamination;

(m) Installation and operation of gas ventilation systems in soil to remove methane or petroleum vapors without any toxic or radioactive co-contaminants if appropriate filtration or gas treatment is in place;

(n) Installation of fences, warning signs, or other security or site control precautions if humans or animals have access to the release; and

(o) Provision of an alternative water supply that would not create new water sources if necessary immediately to reduce exposure to contaminated household or industrial use water and continuing until such time as local authorities can satisfy the need for a permanent remedy.

B6.2 Waste collection, treatment, stabilization, and containment facilities

The siting, construction, and operation of temporary (generally less than 2 years) pilot-scale waste collection and treatment facilities, and pilot-scale (generally less than 1 acre) waste stabilization and containment facilities (including siting, construction, and operation of a small-scale laboratory building or renovation of a room in an existing building for sample analysis), provided that the action (1) Supports remedial investigations/feasibility studies under CERCLA, or similar studies under RCRA (such as RCRA facility investigations/corrective measure studies) or other authorities and (2) would not unduly limit the choice of reasonable remedial alternatives (such as by permanently altering substantial site area or by committing large amounts of funds relative to the scope of the remedial alternatives).

B6.3 Improvements to environmental control systems

Improvements to environmental monitoring and control systems of an existing building or structure (such as changes to scrubbers in air quality control systems or ion-exchange devices and other filtration processes in water treatment systems), provided that during subsequent operations (1) Any substance collected by the environmental control systems would be recycled, released, or disposed of within existing permitted facilities and (2) there are applicable statutory or regulatory requirements or permit conditions for disposal, release, or recycling of any hazardous substance or CERCLA-excluded petroleum or natural gas products that are collected or released in increased quantity or that were not previously collected or released.

B6.4 Facilities for storing packaged hazardous waste for 90 days or less

Siting, construction, modification, expansion, operation, and decommissioning of an onsite facility for storing packaged hazardous waste (as designated in 40 CFR part 261) for 90 days or less or for longer periods as provided in 40 CFR 262.34(d), (e), or (f) (such as accumulation or satellite areas).

B6.5 Facilities for characterizing and sorting packaged waste and overpacking waste

Siting, construction, modification, expansion, operation, and decommissioning of an onsite facility for characterizing and sorting previously packaged waste or for overpacking waste, other than high-level radioactive waste, provided that operations do not involve unpacking waste. These actions do not include waste storage (covered under B6.4, B6.6, B6.10 of this appendix, and C16 of appendix C) or the handling of spent nuclear fuel.

B6.6 Modification of facilities for storing, packaging, and repacking waste

Modification (excluding increases in capacity) of an existing structure used for storing, packaging, or repacking waste other than high-level radioactive waste or spent nuclear fuel, to handle the same class of waste as currently handled at that structure.

B6.7 [Reserved]

B6.8 Modifications for waste minimization and reuse of materials

Minor operational changes at an existing facility to minimize waste generation and for reuse of materials. These changes include, but are not limited to, adding filtration and recycle piping to allow reuse of machining oil, setting up a sorting area to improve process efficiency, and segregating two waste streams previously mingled and assigning new identification codes to the two resulting wastes.

B6.9 Measures to reduce migration of contaminated groundwater

Small-scale temporary measures to reduce migration of contaminated groundwater, including the siting, construction, operation, and decommissioning of necessary facilities. These measures include, but are not limited to, pumping, treating, storing, and reinjecting water, by mobile units or facilities that are built and then removed at the end of the action.

B6.10 Upgraded or replacement waste storage facilities

Siting, construction, modification, expansion, operation, and decommissioning of a small upgraded or replacement facility (less than approximately 50,000 square feet in area) within or contiguous to a previously disturbed or developed area (where active utilities and currently used roads are readily accessible) for storage of waste that is already at the site at the time the storage capacity is to be provided. These actions do not include the storage of high-level radioactive waste, spent nuclear fuel or any waste that requires special precautions to prevent nuclear criticality. (See also B6.4, B6.5, B6.6 of this appendix, and C16 of appendix C.)

B7. Categorical Exclusions Applicable to International Activities

B7.1 Emergency measures under the International Energy Program

Planning and implementation of emergency measures pursuant to the International Energy Program.

B7.2 Import and export of special nuclear or isotopic materials

Approval of import or export of small quantities of special nuclear materials or isotopic materials in accordance with applicable requirements (such as the Nuclear Non-Proliferation Act of 1978 and the "Procedures Established Pursuant to the Nuclear Non-Proliferation Act of 1978" (43 FR 25326, June 9, 1978)).

Appendix C to Subpart D of Part 1021—Classes of Actions That Normally Require EAs But Not Necessarily EISs

Table of Contents

C1 [Reserved]

C2 [Reserved]

C3 Electric Power Marketing Rate Changes, Not Within Normal Operating Limits

Rate changes for electric power, power transmission, and other products or services provided by Power Marketing Administrations that are based on changes in revenue requirements if the operations of generation projects would not remain within normal operating limits.

C4 Upgrading, Rebuilding, or Construction of Powerlines

Upgrading or rebuilding more than approximately 20 miles in length of existing powerlines; or construction of powerlines (1) More than approximately 10 miles in length outside previously disturbed or developed powerline or pipeline rights-of-way or (2) more than approximately 20 miles in length within previously disturbed or developed powerline or pipeline rights-of-way.

C5 Vegetation Management Program

Implementation of a Power Marketing Administration system-wide vegetation management program.

C6 Erosion Control Program

Implementation of a Power Marketing Administration system-wide erosion control program.

C7 Contracts, Policies, and Marketing and Allocation Plans for Electric Power

Establishment and implementation of contracts, policies, and marketing and allocation plans related to electric power acquisition that involve (1) The interconnection of, or acquisition of power from, new generation resources that are equal to or less than 50 average megawatts; (2) changes in the normal operating limits of generation resources equal to or less than 50 average megawatts; or (3) service to discrete new loads of less than10 average megawatts over a 12-month period.

C8 Protection of Cultural Resources and Fish and Wildlife Habitat

Large-scale activities undertaken to protect cultural resources (such as fencing, labeling, and flagging) or to protect, restore, or improve fish and wildlife habitat, fish passage facilities (such as fish ladders and minor diversion channels), or fisheries.

C9 Wetlands Demonstration Projects

Field demonstration projects for wetlands mitigation, creation, and restoration.

C10 [Reserved]

C11 Particle Acceleration Facilities

Siting, construction or modification, operation, and decommissioning of low- or medium-energy (when the primary beam energy exceeds approximately 100 million electron volts and the average beam power exceeds approximately 250 kilowatts or where the average current exceeds 2.5 milliamperes) particle acceleration facilities, including electron beam acceleration facilities, and associated beamlines, storage rings, colliders, and detectors for research and medical purposes, within or contiguous to a previously disturbed or developed area (where active utilities and currently used roads are readily accessible).

C12 Energy System Demonstration Actions

Siting, construction, operation, and decommissioning of energy system demonstration actions (including, but not limited to, wind resource, hydropower, geothermal, fossil fuel, biomass, and solar energy, but excluding nuclear). For purposes of this category, "demonstration actions" means actions that are undertaken at a scale to show whether a technology would be viable on a larger scale and suitable for commercial deployment.

C13 Import or Export Natural Gas Involving Minor New Construction

Approvals or disapprovals of authorizations to import or export natural gas under section 3 of the Natural Gas Act involving minor new construction (such as adding new connections, looping, or compression to an existing natural gas or liquefied natural gas pipeline, or converting an existing oil pipeline to a natural gas pipeline using the same right-of-way).

C14 Water Treatment Facilities

Siting, construction (or expansion), operation, and decommissioning of wastewater, surface water, potable water, and sewage treatment facilities with a total capacity greater than approximately 250,000 gallons per day, and of lower capacity wastewater and surface water treatment facilities whose liquid discharges are not subject to external regulation.

C15 Research and Development Incinerators and Nonhazardous Waste Incinerators

Siting, construction (or expansion), operation, and decommissioning of research

and development incinerators for any type of waste and of any other incinerators that would treat nonhazardous solid waste (as designated in 40 CFR 261.4(b)).

C16 Large Waste Packaging and Storage Facilities

Siting, construction, modification to increase capacity, operation, and decommissioning of packaging and unpacking facilities (such as characterization operations) and large storage facilities (greater than approximately 50,000 square feet in area) for waste, except high-level radioactive waste, generated onsite or resulting from activities connected to site operations. These actions do not include storage; packaging, or unpacking of spent nuclear fuel. (See also B6.4, B6.5, B6.6, and B6.10 of appendix B.)

Appendix D to Subpart D of Part 1021—Classes of Actions that Normally Require EISs

Table of Contents

D1 [Reserved]

D2 Nuclear Fuel Reprocessing Facilities

Siting, construction, operation, and decommissioning of nuclear fuel reprocessing facilities.

D3 Uranium Enrichment Facilities

Siting, construction, operation, and decommissioning of uranium enrichment facilities.

D4 Reactors

Siting, construction, operation, and decommissioning of power reactors, nuclear material production reactors, and test and research reactors.

D5 [Reserved]

D6 [Reserved]

D7 Contracts, Policies, and Marketing and Allocation Plans for Electric Power

Establishment and implementation of contracts, policies, and marketing and allocation plans related to electric power acquisition that involve (1) The interconnection of, or acquisition of power from, new generation resources greater than 50 average megawatts; (2) changes in the normal operating limits of generation resources greater than 50 average megawatts; or (3) service to discrete new loads of 10 average megawatts or more over a 12-month period.

D8 Import or Export of Natural Gas Involving Major New Facilities

Approvals or disapprovals of authorizations to import or export natural gas under section 3 of the Natural Gas Act involving construction of major new natural gas pipelines or related facilities (such as liquefied natural gas terminals and regasification or storage facilities) or significant expansions and modifications of existing pipelines or related facilities.

D9 Import or Export of Natural Gas Involving Major Operational Change

Approvals or disapprovals of authorizations to import or export natural gas under section 3 of the Natural Gas Act involving major operational changes (such as a major increase in the quantity of liquefied natural gas imported or exported).

D10 Treatment, Storage, and Disposal Facilities for High-Level Waste and Spent Nuclear Fuel

Siting, construction, operation, and decommissioning of major treatment, storage, and disposal facilities for high-level waste and spent nuclear fuel, including geologic repositories, but not including onsite replacement or upgrades of storage facilities for spent nuclear fuel at DOE sites where such replacement or upgrade would not result in increased storage capacity.

D11 Waste Disposal Facilities for Transuranic Waste

Siting, construction or expansion, and operation of disposal facilities for transuranic (TRU) waste and TRU mixed waste (TRU waste also containing hazardous waste as designated in 40 CFR part 261).

D12 Incinerators

Siting, construction, and operation of incinerators, other than research and development incinerators or incinerators for nonhazardous solid waste (as designated in 40 CFR 261.4(b)).

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FEDERAL REGISTER

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Part IV

The President

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Thursday, October 13, 2011

Presidential Documents

Title 3—

The President

Proclamation 8732 of October 7, 2011

Fire Prevention Week, 2011

By the President of the United States of America

A Proclamation

Fires, whether caused by people or nature, can have devastating effects. Hundreds of thousands of fires happen in and around American homes every year, killing or injuring thousands of people and causing untold damage to families and communities. This week, we honor the selfless first responders who put themselves on the line to safeguard us all from fire, and we reaffirm the need for Americans to practice fire safety throughout the year.

This year's Fire Prevention Week theme, "Protect Your Family from Fire," encourages all Americans to promote fire prevention awareness both inside and outside the home. Everyone can take significant steps to mitigate the risk of fire, from installing and maintaining smoke alarms on every level of their home to practicing safe cooking behaviors. Families can help protect themselves by designing and practicing an escape plan that includes an outside meeting place with multiple exit paths out of each room. And, with the help of local safety officials, families can work together to protect their neighborhood with a Community Wildfire Protection Plan.

In 2011, Federal firefighting grants have been provided to 16 States to assist with wildfires that have caused destruction to families, farms, and businesses. Those living with the threat of wildfire can safeguard their houses by mowing dry grasses to two inches or less, and by clearing brush, leaves, green grass, and lumber from around their homes. By taking precautionary steps, and by discussing and practicing evacuation plans with our families, we can empower ourselves and our communities with the tools to prevent fires, and to save lives, property, and livestock when fires do occur.

This week, our Nation honors the dedicated firefighters and other first responders who do the hard, dangerous work of keeping our communities safe from fire. Many have laid down their lives to save our friends and neighbors, and their selfless sacrifice defines the nature of courage. As we pay tribute to their memories, let us resolve to maintain our vigilance and take proactive steps to stop fire emergencies before they begin.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 9 through October 15, 2011, as Fire Prevention Week. On Sunday, October 16, 2011, in accordance with Public Law 107–51, the flag of the United States will be flown at half-staff on all Federal office buildings in honor of the National Fallen Firefighters Memorial Service. I call on all Americans to participate in this observance with appropriate programs and activities and by renewing their efforts to prevent fires and their tragic consequences.

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

[FR Doc. 2011–26720
Filed 10–12–11; 11:15 am]
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Presidential Documents

Proclamation 8733 of October 7, 2011

National School Lunch Week, 2011

By the President of the United States of America

A Proclamation

Children are America's greatest treasure, and ensuring their health is one of our most important duties as parents, families, and community members. Our children's continued ability to learn in the classroom, grow up healthy, and reach their full potential will depend on what we do now to secure their future. The National School Lunch Program has been a central part of our Nation's commitment to healthy children since its inception in 1946, improving the nutrition of generations of children with affordable, nutritious meals at school. It now serves tens of millions of children every day.

Despite our successes, too many American children go without proper nutrition. One-third of children in our country are overweight or obese, and without a major change, one-third of children born in the year 2000 will develop Type 2 diabetes during their lifetime. Schools are central to improving child health, as children who eat both school breakfast and lunch may consume more than half their daily calories at school.

The Healthy, Hunger-Free Kids Act of 2010 has brought historic reform to school meal programs. The law takes new steps to address childhood obesity by setting nutritional standards for foods sold in schools, updating requirements for school wellness policies, and providing more nutritional information to parents. It also works to eliminate hunger during the school day by increasing the number of eligible children enrolled in school meal programs and removing barriers to school meals for children most in need.

First Lady Michelle Obama's *Let's Move!* initiative has worked with schools nationwide to create healthy opportunities for children. This year, we exceeded our goal of doubling the number of schools that meet the HealthierUS School Challenge. We have also engaged child care providers in adopting healthier practices, and this year 1.7 million Americans achieved the Presidential Active Lifestyle Award.

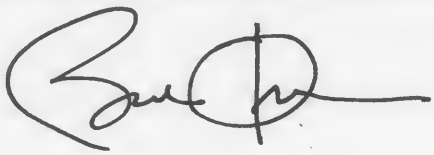
To advance our goals even further, *Let's Move!* has collaborated with individuals and organizations across our Nation to bring over 800 salad bars to schools, providing thousands of children with greater access to fruits and vegetables. School nutrition professionals, chefs, students, parents, and communities have also used their talents to develop nutritious foods for schools through the Recipes for Healthy Kids competition and the Chefs Move to Schools initiative.

Good nutrition at school is an investment in our children's futures. During National School Lunch Week, we thank the food program administrators, educators, parents, and communities who provide for our Nation's sons and daughters, and we recommit to ensuring all our children have the healthy food they need to grow and succeed.

The Congress, by joint resolution of October 9, 1962 (Public Law 87–780), as amended, has designated the week beginning on the second Sunday in October each year as "National School Lunch Week," and has requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim the week of October 9 through October 15, 2011, as National School Lunch Week. I call upon all Americans to join the dedicated individuals who administer the National School Lunch Program in appropriate activities that support the health and well-being of our Nation's children.

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



[FR Doc. 2011–26724
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Presidential Documents

Proclamation 8734 of October 7, 2011

Leif Erikson Day, 2011

By the President of the United States of America

A Proclamation

The first Europeans known to set foot on North America took to the ocean more than a millennium ago, facing fierce waters and an uncertain course. Led by Leif Erikson—son of Iceland and grandson of Norway—these intrepid Scandinavians sailed fearlessly into the unknown, driven by the promise of adventure and dreams of new discoveries. When they landed in modern day Canada, they founded the settlement of Vinland and established a legacy of exploration and exchange that is fundamental to our courageous spirit.

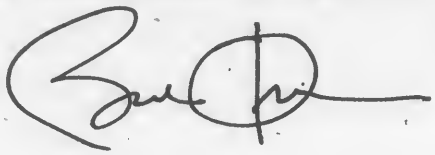
Evoking the bravery and determination that characterized Erikson and his crew of pioneers, a group of Norwegians completed their own journey on October 9, 1825. Crammed into an undersized sloop named *Restauration*, these brave travelers sought new opportunities and embraced the same commitment to exploration that had driven their predecessors centuries earlier. On Leif Erikson Day, we commemorate these historic voyages and celebrate the many ways Nordic-American culture has enriched our Nation.

The triumphs of Erikson and those who followed inspire us to continue reaching for new horizons. Whether developing new technologies, pushing the boundaries of medicine, or driving ever further into the vastness of space, we do so confidently, knowing that icons like Leif Erikson were able to overcome incredible odds and drive the world forward. Today, let us celebrate his life and legacy with the bold pursuit of America's next great innovation.

To honor Leif Erikson and celebrate our Nordic-American heritage, the Congress, by joint resolution (Public Law 88–566) approved on September 2, 1964, has authorized the President to proclaim October 9 of each year as "Leif Erikson Day."

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim October 9, 2011, as Leif Erikson Day. I call upon all Americans to observe this day with appropriate ceremonies, activities, and programs to honor our rich Nordic-American heritage.

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



[FR Doc. 2011–26726
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Presidential Documents

Proclamation 8735 of October 7, 2011

Columbus Day, 2011

By the President of the United States of America

A Proclamation

On October 12, 1492, Christopher Columbus and his crewmembers sighted land after an ambitious voyage across the Atlantic Ocean. The ideals that guided them to this land—courage, determination, and a thirst for discovery—have inspired countless Americans and led to some of our Nation's proudest accomplishments. Today, we renew our commitment to fostering the same spirit of innovation and exploration that will help future generations reach new horizons.

Ten weeks before his arrival in the Americas, Columbus and his crewmembers set sail from Spain in search of a westward route to Asia. Though their journey was daring, it did not yield the trade route they sought. Instead, it illuminated a continent then unknown to Europe, and established an unbreakable bond between two distant lands.

These explorers, and countless others that followed them, encountered indigenous peoples that had lived in the Western hemisphere for tens of thousands of years. On this day, we also remember the tragic hardships these communities endured. We honor their countless and ongoing contributions to our Nation, and we recommit to strengthening the tribal communities that continue to enrich the fabric of American life.

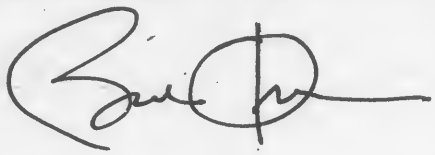
Columbus returned to the Americas three more times after his first historic voyage, and his journey has been followed by millions of immigrants, including our Nation's earliest settlers and Founders. Born in Genoa, Italy, Christopher Columbus was the first in a proud tradition of Italians to cross the Atlantic to our shores. Today, we recognize their indelible influence on our country and celebrate the remarkable ways Italian-Americans have shaped the American experience.

The excitement Christopher Columbus and his crewmembers experienced that October morning is felt every day by today's pioneers: entrepreneurs and inventors, researchers and engineers. On the anniversary of Christopher Columbus's voyage, we celebrate the pursuit of discovery as an essential element of the American character. Embracing this heritage and inspiring young people to set their own sails, our Nation will reach the shores of an ever brighter tomorrow.

In commemoration of Christopher Columbus's historic voyage 519 years ago, the Congress, by joint resolution of April 30, 1934, and modified in 1968 (36 U.S.C. 107), as amended, has requested the President proclaim the second Monday of October of each year as "Columbus Day."

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim October 10, 2011, as Columbus Day. I call upon the people of the United States to observe this day with appropriate ceremonies and activities. I also direct that the flag of the United States be displayed on all public buildings on the appointed day in honor of our diverse history and all who have contributed to shaping this Nation.

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



[FR Doc. 2011–26727
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Billing code 3295–F2–P

Presidential Documents

Executive Order 13587 of October 7, 2011

Structural Reforms To Improve the Security of Classified Networks and the Responsible Sharing and Safeguarding of Classified Information

By the authority vested in me as President by the Constitution and the laws of the United States of America and in order to ensure the responsible sharing and safeguarding of classified national security information (classified information) on computer networks, it is hereby ordered as follows:

Section 1. *Policy.* Our Nation's security requires classified information to be shared immediately with authorized users around the world but also requires sophisticated and vigilant means to ensure it is shared securely. Computer networks have individual and common vulnerabilities that require coordinated decisions on risk management.

This order directs structural reforms to ensure responsible sharing and safeguarding of classified information on computer networks that shall be consistent with appropriate protections for privacy and civil liberties. Agencies bear the primary responsibility for meeting these twin goals. These structural reforms will ensure coordinated interagency development and reliable implementation of policies and minimum standards regarding information security, personnel security, and systems security; address both internal and external security threats and vulnerabilities; and provide policies and minimum standards for sharing classified information both within and outside the Federal Government. These policies and minimum standards will address all agencies that operate or access classified computer networks, all users of classified computer networks (including contractors and others who operate or access classified computer networks controlled by the Federal Government), and all classified information on those networks.

Sec. 2. *General Responsibilities of Agencies.*

Sec. 2.1. The heads of agencies that operate or access classified computer networks shall have responsibility for appropriately sharing and safeguarding classified information on computer networks. As part of this responsibility, they shall:

(a) designate a senior official to be charged with overseeing classified information sharing and safeguarding efforts for the agency;

(b) implement an insider threat detection and prevention program consistent with guidance and standards developed by the Insider Threat Task Force established in section 6 of this order;

(c) perform self-assessments of compliance with policies and standards issued pursuant to sections 3.3, 5.2, and 6.3 of this order, as well as other applicable policies and standards, the results of which shall be reported annually to the Senior Information Sharing and Safeguarding Steering Committee established in section 3 of this order;

(d) provide information and access, as warranted and consistent with law and section 7(d) of this order, to enable independent assessments by the Executive Agent for Safeguarding Classified Information on Computer Networks and the Insider Threat Task Force of compliance with relevant established policies and standards; and

(e) detail or assign staff as appropriate and necessary to the Classified Information Sharing and Safeguarding Office and the Insider Threat Task Force on an ongoing basis.

Sec. 3. *Senior Information Sharing and Safeguarding Steering Committee.*

Sec. 3.1. There is established a Senior Information Sharing and Safeguarding Steering Committee (Steering Committee) to exercise overall responsibility and ensure senior-level accountability for the coordinated interagency development and implementation of policies and standards regarding the sharing and safeguarding of classified information on computer networks.

Sec. 3.2. The Steering Committee shall be co-chaired by senior representatives of the Office of Management and Budget and the National Security Staff. Members of the committee shall be officers of the United States as designated by the heads of the Departments of State, Defense, Justice, Energy, and Homeland Security, the Office of the Director of National Intelligence, the Central Intelligence Agency, and the Information Security Oversight Office within the National Archives and Records Administration (ISOO), as well as such additional agencies as the co-chairs of the Steering Committee may designate.

Sec. 3.3. The responsibilities of the Steering Committee shall include:

(a) establishing Government-wide classified information sharing and safeguarding goals and annually reviewing executive branch successes and shortcomings in achieving those goals;

(b) preparing within 90 days of the date of this order and at least annually thereafter, a report for the President assessing the executive branch's successes and shortcomings in sharing and safeguarding classified information on computer networks and discussing potential future vulnerabilities;

(c) developing program and budget recommendations to achieve Government-wide classified information sharing and safeguarding goals;

(d) coordinating the interagency development and implementation of priorities, policies, and standards for sharing and safeguarding classified information on computer networks;

(e) recommending overarching policies, when appropriate, for promulgation by the Office of Management and Budget or the ISOO;

(f) coordinating efforts by agencies, the Executive Agent, and the Task Force to assess compliance with established policies and standards and recommending corrective actions needed to ensure compliance;

(g) providing overall mission guidance for the Program Manager-Information Sharing Environment (PM–ISE) with respect to the functions to be performed by the Classified Information Sharing and Safeguarding Office established in section 4 of this order; and

(h) referring policy and compliance issues that cannot be resolved by the Steering Committee to the Deputies Committee of the National Security Council in accordance with Presidential Policy Directive/PPD–1 of February 13, 2009 (Organization of the National Security Council System).

Sec. 4. *Classified Information Sharing and Safeguarding Office.*

Sec. 4.1. There shall be established a Classified Information Sharing and Safeguarding Office (CISSO) within and subordinate to the office of the PM–ISE to provide expert, full-time, sustained focus on responsible sharing and safeguarding of classified information on computer networks. Staff of the CISSO shall include detailees, as needed and appropriate, from agencies represented on the Steering Committee.

Sec. 4.2. The responsibilities of CISSO shall include:

(a) providing staff support for the Steering Committee;

(b) advising the Executive Agent for Safeguarding Classified Information on Computer Networks and the Insider Threat Task Force on the development of an effective program to monitor compliance with established policies

and standards needed to achieve classified information sharing and safeguarding goals; and

(c) consulting with the Departments of State, Defense, and Homeland Security, the ISOO, the Office of the Director of National Intelligence, and others, as appropriate, to ensure consistency with policies and standards under Executive Order 13526 of December 29, 2009, Executive Order 12829 of January 6, 1993, as amended, Executive Order 13549 of August 18, 2010, and Executive Order 13556 of November 4, 2010.

Sec. 5. *Executive Agent for Safeguarding Classified Information on Computer Networks.*

Sec. 5.1. The Secretary of Defense and the Director, National Security Agency, shall jointly act as the Executive Agent for Safeguarding Classified Information on Computer Networks (the "Executive Agent"), exercising the existing authorities of the Executive Agent and National Manager for national security systems, respectively, under National Security Directive/NSD–42 of July 5, 1990, as supplemented by and subject to this order.

Sec. 5.2. The Executive Agent's responsibilities, in addition to those specified by NSD–42, shall include the following:

(a) developing effective technical safeguarding policies and standards in coordination with the Committee on National Security Systems (CNSS), as re-designated by Executive Orders 13286 of February 28, 2003, and 13231 of October 16, 2001, that address the safeguarding of classified information within national security systems, as well as the safeguarding of national security systems themselves;

(b) referring to the Steering Committee for resolution any unresolved issues delaying the Executive Agent's timely development and issuance of technical policies and standards;

(c) reporting at least annually to the Steering Committee on the work of CNSS, including recommendations for any changes needed to improve the timeliness and effectiveness of that work; and

(d) conducting independent assessments of agency compliance with established safeguarding policies and standards, and reporting the results of such assessments to the Steering Committee.

Sec. 6. *Insider Threat Task Force.*

Sec. 6.1. There is established an interagency Insider Threat Task Force that shall develop a Government-wide program (insider threat program) for deterring, detecting, and mitigating insider threats, including the safeguarding of classified information from exploitation, compromise, or other unauthorized disclosure, taking into account risk levels, as well as the distinct needs, missions, and systems of individual agencies. This program shall include development of policies, objectives, and priorities for establishing and integrating security, counterintelligence, user audits and monitoring, and other safeguarding capabilities and practices within agencies.

Sec. 6.2. The Task Force shall be co-chaired by the Attorney General and the Director of National Intelligence, or their designees. Membership on the Task Force shall be composed of officers of the United States from, and designated by the heads of, the Departments of State, Defense, Justice, Energy, and Homeland Security, the Office of the Director of National Intelligence, the Central Intelligence Agency, and the ISOO, as well as such additional agencies as the co-chairs of the Task Force may designate. It shall be staffed by personnel from the Federal Bureau of Investigation and the Office of the National Counterintelligence Executive (ONCIX), and other agencies, as determined by the co-chairs for their respective agencies and to the extent permitted by law. Such personnel must be officers or full-time or permanent part-time employees of the United States. To the extent permitted by law, ONCIX shall provide an appropriate work site and administrative support for the Task Force.

Sec. 6.3. The Task Force's responsibilities shall include the following:

(a) developing, in coordination with the Executive Agent, a Government-wide policy for the deterrence, detection, and mitigation of insider threats, which shall be submitted to the Steering Committee for appropriate review;

(b) in coordination with appropriate agencies, developing minimum standards and guidance for implementation of the insider threat program's Government-wide policy and, within 1 year of the date of this order, issuing those minimum standards and guidance, which shall be binding on the executive branch;

(c) if sufficient appropriations or authorizations are obtained, continuing in coordination with appropriate agencies after 1 year from the date of this order to add to or modify those minimum standards and guidance, as appropriate;

(d) if sufficient appropriations or authorizations are not obtained, recommending for promulgation by the Office of Management and Budget or the ISOO any additional or modified minimum standards and guidance developed more than 1 year after the date of this order;

(e) referring to the Steering Committee for resolution any unresolved issues delaying the timely development and issuance of minimum standards;

(f) conducting, in accordance with procedures to be developed by the Task Force, independent assessments of the adequacy of agency programs to implement established policies and minimum standards, and reporting the results of such assessments to the Steering Committee;

(g) providing assistance to agencies, as requested, including through the dissemination of best practices; and

(h) providing analysis of new and continuing insider threat challenges facing the United States Government.

Sec. 7. *General Provisions.* (a) For the purposes of this order, the word "agencies" shall have the meaning set forth in section 6.1(b) of Executive Order 13526 of December 29, 2009.

(b) Nothing in this order shall be construed to change the requirements of Executive Orders 12333 of December 4, 1981, 12829 of January 6, 1993, 12968 of August 2, 1995, 13388 of October 25, 2005, 13467 of June 30, 2008, 13526 of December 29, 2009, 13549 of August 18, 2010, and their successor orders and directives.

(c) Nothing in this order shall be construed to supersede or change the authorities of the Secretary of Energy or the Nuclear Regulatory Commission under the Atomic Energy Act of 1954, as amended; the Secretary of Defense under Executive Order 12829, as amended; the Secretary of Homeland Security under Executive Order 13549; the Secretary of State under title 22, United States Code, and the Omnibus Diplomatic Security and Antiterrorism Act of 1986; the Director of ISOO under Executive Orders 13526 and 12829, as amended; the PM–ISE under Executive Order 13388 or the Intelligence Reform and Terrorism Prevention Act of 2004, as amended; the Director, Central Intelligence Agency under NSD–42 and Executive Order 13286, as amended; the National Counterintelligence Executive, under the Counterintelligence Enhancement Act of 2002; or the Director of National Intelligence under the National Security Act of 1947, as amended, the Intelligence Reform and Terrorism Prevention Act of 2004, as amended, NSD–42, and Executive Orders 12333, as amended, 12968, as amended, 13286, as amended, 13467, and 13526.

(d) Nothing in this order shall authorize the Steering Committee, CISSO, CNSS, or the Task Force to examine the facilities or systems of other agencies, without advance consultation with the head of such agency, nor to collect information for any purpose not provided herein.

(e) The entities created and the activities directed by this order shall not seek to deter, detect, or mitigate disclosures of information by Government employees or contractors that are lawful under and protected by the Intelligence Community Whistleblower Protection Act of 1998, Whistleblower

Protection Act of 1989, Inspector General Act of 1978, or similar statutes, regulations, or policies.

(f) With respect to the Intelligence Community, the Director of National Intelligence, after consultation with the heads of affected agencies, may issue such policy directives and guidance as the Director of National Intelligence deems necessary to implement this order.

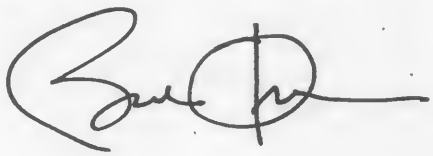
(g) Nothing in this order shall be construed to impair or otherwise affect:

(1) the authority granted by law to an agency, or the head thereof; or

(2) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(h) This order shall be implemented consistent with applicable law and appropriate protections for privacy and civil liberties, and subject to the availability of appropriations.

(i) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



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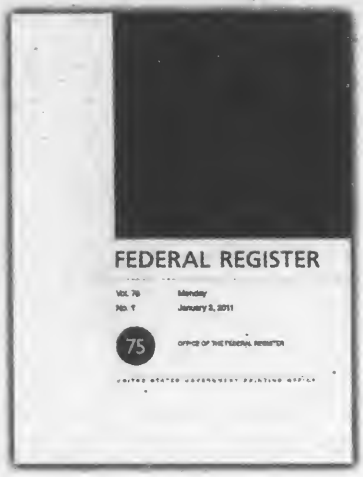

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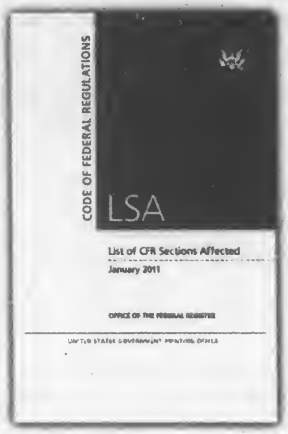

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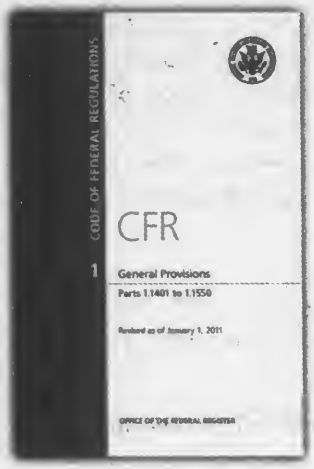

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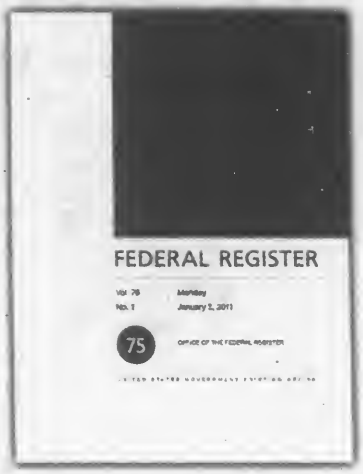

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