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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, January 25, 2011
9 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741–6008

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0295; Directorate Identifier 2007–NM–298–AD; Amendment 39–16576; AD 2011–02–03]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 757 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Model 757–200, –200PF, –200CB, and –300 series airplanes. This AD requires an inspection of the two spring arms in the spin brake assemblies in the nose wheel well to determine if the spring arms are made of aluminum or composite material, and repetitive related investigative/corrective actions if necessary. This AD also provides options for terminating the repetitive actions. This AD results from reports of cracked and broken aluminum springs. We are issuing this AD to detect and correct cracked or broken springs. A cracked or broken spring could separate from the airplane and result in potential hazard to persons or property on the ground, or ingestion into the engine with engine damage and potential shutdown, or damage to the airplane.

DATES: This AD becomes effective February 16, 2011.

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Steve Fox, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6425; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a supplemental notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to all Model 757–200, –200PF, –200CB, and –300 series airplanes. That supplemental NPRM was published in the **Federal Register** on October 19, 2009 (74 FR 53430). The original NPRM proposed to require an inspection of the two spring arms in the spin brake assemblies in the nose wheel well to determine if the spring arms are made of aluminum or composite material, and repetitive related investigative/corrective actions if necessary. The original NPRM also would have provided for optional terminating actions for the repetitive inspections. The supplemental NPRM proposed to require revising the original NPRM to include a parts installation paragraph and to provide options for terminating the repetitive actions.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received on the supplemental NPRM. Continental Airlines had no additional comments beyond what was previously submitted in the supplemental NPRM.

Request To Revise Delegation of Authority

Boeing requested that we revise the Delegation Option Authorization (DOA) holder to Boeing Commercial Airplanes Organization Designation Authorization (ODA) in paragraph (l)(3) of the supplemental NPRM.

We agree with Boeing's request to revise the delegation of authority. Boeing Commercial Airplanes has received an ODA, which replaces the previous designation as a DOA holder. We have revised paragraph (m)(3) of this AD (paragraph (l)(3) of the supplemental NPRM) to add delegation of authority to Boeing Commercial Airplanes ODA to approve an alternative method of compliance (AMOC) for any repair required by this AD.

Request To Revise the AD To Permit the Accomplishment of Paragraph (k) of this AD in a Shop Environment

American Airlines (AAL) requested that the supplemental NPRM permit the accomplishment of paragraph (j) of the supplemental NPRM, "Parts Installation," in a shop environment. AAL stated that paragraph (j) of the supplemental NPRM (paragraph (k) of this AD) presents several issues that need resolution. AAL stated that the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–32–0176, Revision 1, dated October 16, 2008, are applicable to an on-wing inspection with no provisions for shop instructions.

AAL also stated that paragraph 3.B.5.a. of Boeing Special Attention Service Bulletin 757–32–0176, Revision 1, dated October 16, 2008, contains multiple areas of concern. AAL stated that the service bulletin instructs operators to "Replace the left or right (as applicable) aluminum spring with a new aluminum spring in accordance with FIGURE 4 * * *." However, AAL stated that this figure provides instructions to replace the spring on-wing. AAL stated that it has processes in place by which the spring assembly (141N0091–22) is reworked (to include any necessary spring replacement) in accordance with Boeing drawing data in a shop environment. AAL stated that the supplemental NPRM contains no

provisions for accomplishing this spring replacement in a shop environment. AAL requested that the final rule contain appropriate language to allow operators to accomplish the intent of Figure 4 of the service bulletin in a shop environment.

We disagree with AAL's request to include language specifying that the accomplishment of paragraph (k) of this AD is permitted in a shop environment. Although the final installation of the spin brakes is required by this AD and installation may be accomplished in a shop environment, AD compliance is established for airplanes and not parts. AAL may perform shop maintenance provided that the AD is complied with and the airplane meets the requirements of this AD.

In addition, the service bulletin does not provide for inspections and replacement of parts in a shop environment where the installation of the spin brake assemblies could be accomplished off the airplane. The commenter does not provide sufficient suggestions to demonstrate and ensure that the corrected assemblies could be installed such that each affected airplane could demonstrate compliance. An operator may request approval of an alternative method of compliance (AMOC) in accordance with the provisions of paragraph (m) of this AD for brake assemblies that were re-worked off the airplane. No changes to the AD have been made in this regard.

Request To Allow Replacement of the Existing Spin Brake Assembly With a Serviceable Spin Brake Assembly

AAL stated that there is an omission from paragraph 3.B.5.a. of Boeing Special Attention Service Bulletin 757–32–0176, Revision 1, dated October 16, 2008. AAL stated that the paragraph allows replacement of the existing spin brake assembly with a new spin brake assembly in accordance with the Boeing 757 Airplane Maintenance Manual, but no provisions are made for installing a serviceable (used) spin brake.

From these comments we infer that AAL is requesting that we revise the final rule to also allow replacement of an existing spin brake assembly with a serviceable assembly. We agree with AAL that a serviceable spin brake assembly is acceptable for compliance. We have added paragraph (j) of this AD to allow replacement with a serviceable spin brake assembly if the assembly is inspected and all applicable related investigative and corrective actions have been applied in accordance with the requirements of paragraph (g) of this AD.

Request To Use Part Substitutions

AAL requested that we revise the supplemental NPRM to allow use of approved part substitutions for accomplishing the proposed actions. AAL stated that where common hardware such as washers, nuts, bolts, shims, sealants, and adhesives are specified in Boeing Special Attention Service Bulletin 757–32–0176, Revision 1, dated October 16, 2008, operators with accepted processes may use approved substitutes determined to be equivalent in accordance with the operator parts management systems. AAL stated that this will eliminate a duplication of effort for all parties, including the operators, Boeing, and the engineering branch of the Seattle Aircraft Certification Office by avoiding unnecessary requests for AMOCs to allow equivalent hardware.

AAL stated that many operators, including AAL, have an FAA-accepted process by which they combine certain parts that have been determined to be equivalent and are placed in inventory under a single company part number. AAL stated that this process is longstanding and is done to facilitate an efficient inventory system. AAL also stated that the parts disposition authority (PDA) for American Airlines is contained in the engineering procedures manual (EPM), which is incorporated into the general manual (GM). AAL stated that the GM is required by the FAA-approved operations specification. AAL stated that Section 15–20 of the EPM defines the process by which part equivalency can be established. The basis for equivalency is found in source documents provided by the original equipment manufacturer (OEM), such as the Boeing Spec-2000, Boeing Document D–590, Boeing qualified product list (QPL), the applicable aircraft illustrated parts catalog (IPC), or industry standard specifications such as military specification (MS), National Aerospace Standards (NAS), Army Navy (AN), Society of Automotive Engineers (SAE), *etc.*, or other qualified data provided by the OEM. AAL also stated that in any case where equivalency is clearly unambiguous, AAL engineering will use these and other FAA-approved sources such as OEM drawings, specifications, OEM correspondence, or parts manufacturer approval (PMA) authorizations to determine the interchangeability of parts. AAL stated that while some of the above documents have been included as notes in applicable service bulletins in order to provide equivalency, it has found a number of cases where, during accomplishment of an AD, there was not sufficient information provided to make that assessment.

We disagree with AAL's request to use part substitutions for accomplishing the actions in this AD. The requested list of substitute parts and materials is extensive and uncontrolled—and, in many cases, not FAA approved. An operator may request approval of an AMOC in accordance with the provisions of paragraph (m) of this AD. We have not changed this AD regarding this issue.

Request To Revise the Phrase "Investigative and Corrective Actions"

Northwest Airlines (NWA) requested that we revise the phrase "investigative and corrective actions" in the supplemental NPRM. NWA stated that the use of the phrase "investigative and corrective actions" in paragraphs (g) and (j) of the supplemental NPRM may lead to confusion as to what action(s) in the service instructions are required. NWA proposed that the phrase be changed to "compliance action" in paragraph (g) of the supplemental NPRM, and that the phrase should be removed from paragraph (j) of the supplemental NPRM. NWA stated that the term "investigative and corrective actions" is not used in the service instructions and is not defined in the supplemental NPRM. NWA stated that in the process task flow of the service instructions, the "determination" or "investigation" of spring material type was identified earlier in paragraph (g) of the supplemental NPRM, and the tasks that remain to be accomplished are compliance actions (inspect or replace), and not investigative actions.

We disagree with NWA's request to revise the phrase "investigative and corrective actions." This terminology was defined in the Relevant Service Information section of the original NPRM. The "related investigative and corrective actions" include repetitive detailed and high frequency eddy current inspections for cracking of the aluminum spring arm, and the corrective action is replacing the spring arm with a new spring arm made of either aluminum or composite material. We have not changed this AD in this regard.

Request To Add a Note to the Supplemental NPRM

NWA also requested that a note be added to the supplemental NPRM stating that Parts 1 and 6 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–32–0176, Revision 1, dated October 16, 2008, are for operator use and

compliance documentation is not required.

NWA stated that the FAA did not address its concern in a previous comment on the original NPRM. NWA stated that the FAA was clear on how operators perform access and restoration per the operators' normal maintenance, but the FAA may have missed the point that operators also have to retain technician sign-off of ADs as permanent records. NWA stated that if operators access and restore the area via other "normal maintenance routine work cards," the operators do not desire to maintain those other work cards just to comply with the retention of records aspect of rulemaking policy. NWA stated that the access and restoration are not part of the service instruction safety aspect that the FAA is trying to mitigate with this rulemaking. NWA stated that by placing a note in the AD that states that access/restoration is not part of the safety aspect of the rulemaking and that retention of records is not required for access/restoration, operators would be permitted to not have separate access/restoration work cards.

We partially agree with the commenter's request to delete Parts 1 and 6 (access and close). As we clarified in the supplemental NPRM, Note 8 under paragraph 3.A. of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–32–0176, Revision 1, dated October 16, 2008, gives provisions for operators to use accepted alternative procedures for actions specified in the Accomplishment Instructions when the words "refer to" are used. Those words are used in both Parts 1 and 6 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–32–0176, Revision 1, dated October 16, 2008. In addition, although these actions are necessary to accomplish the inspections, Boeing Special Attention Service Bulletin 757–32–0176, Revision 1, dated October 16, 2008, provides alternative methods for access and close-up, as defined in Notes 5 and 6 under paragraph 3.A. of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–32–0176, Revision 1, dated October 16, 2008. Since the suggested note is already contained in the Accomplishment Instructions of the service bulletin, no additional notes are necessary in this AD.

We have changed paragraph (g) of this AD to limit the required actions to those specified only in Parts 2 through 5 of Boeing Special Attention Service Bulletin 757–32–0176, Revision 1, dated October 16, 2008.

Request To Revise the Initial Compliance Time

One commenter, Jennifer Owens, requested that we revise the initial compliance time. The commenter stated that the issue of cracked and broken aluminum springs has been known to the FAA since at least September 2007 (when the original Boeing "paperwork"—*i.e.*, service information—was released). The commenter stated that under the original docket, published in March 2008, multiple parties requested that the rule be amended to refer to a later revision of "the Boeing paperwork." The commenter stated that this later revision of the "paperwork," according to the current proposed rule, was released on October 16, 2008. The commenter also stated that the new proposed rule was published on October 19, 2009, just over a year since Boeing revised its "paperwork."

The commenter suggested that the annual utilization rate of about 1,050 flight cycles is representative of how many Model 757 airplanes are used. The commenter stated that given this delay, and based on this utilization, operators have had the opportunity to skip three or four of the required 300-cycle inspections and are approaching the point where they may skip the first of the 1,500-cycle inspections. The commenter stated that because of this delay, and the fact that the FAA chose instead to re-open the comment period, it further delayed the release of the final rule by another 18 months. The commenter stated that if a delay of approximately 3 years is acceptable, then the inspection intervals of approximately 2–3 months and 18 months (based on the utilization contained above) are unnecessarily short. The commenter stated that if neither is true, then initial compliance times should be shortened to account for the delay in releasing the final rule.

We assume the commenter is referring to Boeing Special Attention Service Bulletin, 757–32–0176, dated September 10, 2007, as "the original Boeing paperwork," and Boeing Special Attention Service Bulletin 757–32–0176, Revision 1, dated October 16, 2008, as "the later revision of the Boeing paperwork." We disagree with the commenter's request to revise the initial compliance time. We have determined that having a terminating modification for the required inspections provides a higher level of safety than the reliance on continued re-inspection. Also, in developing an appropriate compliance time for this action, we considered the safety implications, parts availability, and normal maintenance schedules for the timely accomplishment of the modification. We have determined that the compliance time as proposed will ensure an acceptable level of safety and allow the modifications to be done during scheduled maintenance intervals for most affected operators. We have not changed this AD in this regard.

Explanation of Change Made to This AD

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

Conclusion

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

Explanation of Changes To Costs of Compliance

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

Costs of Compliance

We estimate that this AD would affect 668 airplanes of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this proposed AD for U.S. operators to be $56,780, or $85 per product.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation

is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. *See* the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–02–03 The Boeing Company: Amendment 39–16576. Docket No. FAA–2008–0295; Directorate Identifier 2007–NM–298–AD.

Effective Date

(a) This AD becomes effective February 16, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all The Boeing Company Model 757–200, –200PF, –200CB, and –300 series airplanes, certificated in any category.

Subject

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

Unsafe Condition

(e) This AD results from reports of cracked and broken aluminum springs. We are issuing this AD to detect and correct cracked or broken springs. A cracked or broken spring could separate from the airplane and result in potential hazard to persons or property on the ground, or ingestion into the engine with engine damage and potential shutdown, or damage to the airplane.

Compliance

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

Inspections and Corrective Actions

(g) At the applicable time specified in paragraph 1.E., "Compliance," of Boeing Special Attention Service Bulletin 757–32–0176, Revision 1, dated October 16, 2008, except that where Boeing Special Attention Service Bulletin 757–32–0176, Revision 1, dated October 16, 2008, specifies a compliance time after the date "on this service bulletin," this AD requires compliance within the specified compliance time after the effective date of this AD: Do a general visual inspection to determine the material (aluminum or composite) of the two springs in the spin brake assemblies in the nose wheel well. A review of airplane maintenance records is acceptable in lieu of this inspection if the material can be conclusively determined from that review. At the applicable time specified in paragraph 1.E., "Compliance," of Boeing Special Attention Service Bulletin 757–32–0176, Revision 1, dated October 16, 2008, do all applicable related investigative and corrective actions, and all repetitive inspections thereafter in accordance with Parts 2 through 5 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–32–0176, Revision 1, dated October 16, 2008; except as provided by paragraph (j) of this AD.

Optional Terminating Actions

(h) Replacing an aluminum spin brake assembly with a spin brake assembly made of composite material in accordance with Figure 5 of Boeing Special Attention Service Bulletin 757–32–0176, Revision 1, dated October 16, 2008, ends the repetitive inspections required by paragraph (g) of this AD for that spring.

(i) Replacing an aluminum spring with a spring made of corrosion–resistant steel (CRES), in accordance with Figure 6 of Boeing Special Attention Service Bulletin 757–32–0176, Revision 1, dated October 16, 2008, ends the repetitive inspections required by paragraph (g) of this AD for that spring.

Exception to the Service Bulletin: Using a Serviceable Spin Brake Assembly

(j) A serviceable spin brake assembly may be used to replace a cracked part, provided that it has been inspected and all applicable related investigative and corrective actions have been applied in accordance with the requirements of paragraph (g) of this AD.

Parts Installation

(k) As of the effective date of this AD, no person may install an aluminum spring on any airplane unless it has been inspected and all applicable related investigative and corrective actions have been applied in accordance with the requirements of paragraph (g) of this AD.

Credit for Previous Revision of Service Bulletin

(l) Actions done before the effective date of this AD in accordance with Boeing Special Attention Service Bulletin 757–32–0176, dated September 10, 2007, are acceptable for compliance with the corresponding requirements of this AD.

Alternative Methods of Compliance (AMOCs)

(m)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Steve Fox, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6425; fax (425) 917–6590; Or, e-mail information to *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov*.

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

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

Material Incorporated by Reference

(n) You must use Boeing Special Attention Service Bulletin 757–32–0176, Revision 1, dated October 16, 2008, to do the actions required by this AD, unless the AD specifies otherwise. If you accomplish the optional actions specified in this AD, you must use Boeing Special Attention Service Bulletin 757–32–0176, Revision 1, dated October 16, 2008, to perform those actions, unless the AD specifies otherwise.

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

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

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

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

Issued in Renton, Washington, on December 30, 2010.

Suzanne Masterson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–371 Filed 1–11–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0228; Directorate Identifier 2009–NM–252–AD; Amendment 39–16574; AD 2011–02–01]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model MD–11 and MD–11F Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD requires a one-time inspection to detect damage of the wire assemblies of the tail tank fuel system, a wiring change, and corrective actions if necessary. This AD also requires, for certain airplanes, a general visual inspection for correct installation of the self-adhering high-temperature electrical insulation tape; installation of a wire assembly support bracket and routing wire assembly; changing wire supports; and installation of a wire protection bracket. This AD was prompted by fuel system reviews conducted by the manufacturer. We are issuing this AD to detect and correct a potential of ignition sources inside fuel tanks, which, in combination with flammable vapors, could result in a fuel tank fire or explosion, and consequent loss of the airplane.

DATES: This AD is effective February 16, 2011.

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

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; e-mail *dse.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Serj Harutunian, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; phone: (562) 627–5254; fax: (562) 627–5210; e-mail: *Serj.Harutunian@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a supplemental notice of proposed rulemaking (SNPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to the specified products. That SNPRM published in the **Federal Register** on November 17, 2010 (75 FR 70150). The original NPRM (75 FR 12464, March 16, 2010) proposed to require a one-time inspection to detect damage of the wire assemblies of the tail tank fuel system, a wiring change, and corrective actions if necessary. The SNPRM proposed to revise the original NPRM by adding, for certain airplanes, a general visual inspection for correct installation of the self-adhering high-temperature electrical insulation tape; installation of a wire assembly support bracket and routing wire assembly; changing wire supports; and installation of a wire protection bracket.

Comments

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

Explanation of Change Made to the AD

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

Conclusion

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial changes and the change described previously. We have determined that these minor changes:

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

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

Costs of Compliance

We estimate that this AD affects 110 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection of tail tank fuel system wire assembly.	1 work-hour × $85 per hour = $85	$0	$85	$9,350.
Inspection of electrical insulation tape	1 work-hour × $85 per hour = $85	0	85	$9,350.
Change wire supports	3 work-hours × $85 per hour = $255	9	264	Up to $29,040.

We estimate the following costs to do any necessary installations and repairs that would be required based on the results of the inspection. We have no way of determining the number of aircraft that might need these installations and repairs.

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Installation/repair	Up to 23 work-hours × $85 per hour = $1,955	$11,829	Up to $13,784.
Adjust tape installation	1 × $85 per hour = $85	0	$85.

According to the manufacturer, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–02–01 The Boeing Company: Amendment 39–16574 ; Docket No. FAA–2010–0228; Directorate Identifier 2009–NM–252–AD.

Effective Date

(a) This AD is effective February 16, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to The Boeing Company Model MD–11 and MD–11F airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin MD11–28A124, Revision 1, dated August 24, 2010.

Subject

(d) Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 28: Fuel.

Unsafe Condition

(e) This AD was prompted by fuel system reviews conducted by the manufacturer. We are issuing this AD to detect and correct a potential of ignition sources inside fuel tanks, which, in combination with flammable vapors, could result in a fuel tank fire or explosion, and consequent loss of the airplane.

Compliance

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

Action

(g) For airplanes in Group 1, Configuration 1; and Group 2, Configuration 1: Within 60 months after the effective date of this AD, perform a general visual inspection to detect damage of wire assemblies of the tail tank fuel system, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD11–28A124, Revision 1, dated August 24, 2010.

(1) For airplanes in Group 1, Configuration 1: If no damage is found, before further flight, apply self-adhering high-temperature electrical insulation tape on the wire assemblies, install wire assembly support brackets, route wire assemblies, install extruded channel wire supports, and install a wire protection bracket, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD11–28A124, Revision 1, dated August 24, 2010.

(2) For airplanes in Group 1, Configuration 1: If damage is found, before further flight, repair or replace the wire assemblies, apply

self-adhering high-temperature electrical insulation tape on the wire assemblies, install wire assembly support brackets, route wire assemblies, install extruded channel wire supports, and install a wire protection bracket, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD11–28A124, Revision 1, dated August 24, 2010.

(3) For airplanes in Group 2, Configuration 1: If no damage is found, before further flight, install wire assembly support brackets, route wire assemblies, install extruded channel wire supports, and install a wire protection bracket, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD11–28A124, Revision 1, dated August 24, 2010.

(4) For airplanes in Group 2, Configuration 1: If damage is found, before further flight, repair or replace the wire assemblies, install wire assembly support brackets, route wire assemblies, install extruded channel wire supports, and install a wire protection bracket, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD11–28A124, Revision 1, dated August 24, 2010.

(h) For airplanes in Group 1, Configuration 2: Within 60 months after the effective date of this AD, do a general visual inspection for correct installation of the self-adhering high-temperature electrical insulation tape, and change the wire supports, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD11–28A124, Revision 1, dated August 24, 2010. If the self-adhering high-temperature electrical insulation tape is installed incorrectly, before further flight, adjust the tape installation to achieve the correct dimensions, in accordance with Figure 1 of Boeing Alert Service Bulletin MD11–28A124, Revision 1. dated August 24, 2010.

(i) For airplanes in Group 2, Configuration 2: Within 60 months after the effective date of this AD, change the wire supports, in accordance with Figure 2 of Boeing Alert Service Bulletin MD11–28A124, Revision 1, dated August 24, 2010.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. 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.

Related Information

(k) For more information about this AD, contact Serj Harutunian, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; phone: (562) 627–5254; fax: (562) 627–5210; e-mail: *Serj.Harutunian@faa.gov.*

Material Incorporated by Reference

(l) You must use Boeing Alert Service Bulletin MD11–28A124, Revision 1, dated August 24, 2010, to do the actions required by this AD, unless the AD specifies otherwise.

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

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

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

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

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–271 Filed 1–11–11; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0225; Directorate Identifier 2009–NM–203–AD; Amendment 39–16525; AD 2010–24–06]

RIN 2120–AA64

Airworthiness Directives; Short Brothers PLC Model SD3 Airplanes

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

ACTION: Final rule.

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

Subsequent to accidents involving Fuel Tank System explosions in flight * * * and on ground, * * * Special Federal Aviation Regulation 88 (SFAR88) * * * required a safety review of the aircraft Fuel Tank System * * *.

* * * * *

Fuel Airworthiness Limitations are items arising from a systems safety analysis that have been shown to have failure mode(s) associated with an 'unsafe condition' * * *. These are identified in Failure Conditions for which an unacceptable probability of ignition risk could exist if specific tasks and/or practices are not performed in accordance with the manufacturers' requirements.

* * * * *

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

DATES: This AD becomes effective February 16, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of February 16, 2011.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of July 21, 2006 (71 FR 34801, June 16, 2006).

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

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a supplemental notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That supplemental NPRM was published in the **Federal Register** on August 4, 2010 (75 FR 46864), and proposed to supersede AD 2006–12–18, Amendment 39–14644 (71 FR 34801, June 16, 2006). That NPRM proposed to require revising the airplane flight manual (AFM); revising the Airworthiness Limitation (AWL) section; doing a resistance check, inspection, and jumper installation; and revising the AWL section. The MCAI states:

Subsequent to accidents involving Fuel Tank System explosions in flight * * * and on ground, the FAA published Special Federal Aviation Regulation 88 (SFAR88) in June 2001. SFAR 88 required a safety review of the aircraft Fuel Tank System to determine that the design meets the requirements of FAR [Federal Aviation Regulation] § 25.901 and § 25.981(a) and (b).

A similar regulation has been recommended by the JAA [Joint Aviation Authorities] to the European National Aviation Authorities in JAA letter 04/00/02/07/03–L024 of 3 February 2003. The review was requested to be mandated by NAA's [National Airworthiness Authorities] using JAR [Joint Aviation Requirement] § 25.901(c), § 25.1309.

In August 2005 EASA [European Aviation Safety Agency] published a policy statement on the process for developing instructions for maintenance and inspection of Fuel Tank System ignition source prevention (EASA D 2005/CPRO, *www.easa.eu.int/home/cert_policy_statements_en.html*) that also included the EASA expectations with regard to compliance times of the corrective actions on the unsafe and the not unsafe part of the harmonised design review results. On a global scale the TC [type certificate] holders committed themselves to the EASA published compliance dates (see EASA policy statement). The EASA policy statement has been revised in March 2006: The date of 31–12–2005 for the unsafe related actions has now been set at 01–07–2006.

Fuel Airworthiness Limitations are items arising from a systems safety analysis that have been shown to have failure mode(s) associated with an 'unsafe condition' as defined in FAA's memo 2003–112–15 'SFAR 88—Mandatory Action Decision Criteria'. These are identified in Failure Conditions for which an unacceptable probability of ignition risk could exist if specific tasks and/or practices are not performed in accordance with the manufacturers' requirements.

This EASA Airworthiness Directive mandates the Fuel System Airworthiness Limitations, comprising maintenance/inspection tasks and Critical Design Control Configuration Limitations (CDCCL) for the type of aircraft, that resulted from the design reviews and the JAA recommendation and EASA policy statement mentioned above.

Revision History: PAD [proposed airworthiness directive] 06–018R1 has been issued to endorse comments received for PAD 06–018 and due to the change of the EASA policy statement on fuel tank safety on March 2006.

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

Comments

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

Explanation of Changes to This AD

We have revised Table 1 of this AD to indicate the appropriate AFM for the identified airplane models. We have also added new paragraph (l) to this AD (and have reidentified subsequent paragraphs accordingly) to give credit to operators that might have included Shorts Advance Amendment Bulletin 1/2004, dated 7/13/04, into the incorrect AFM before the effective date of this AD. We have determined that the content of Shorts Advance Amendment Bulletin 1/2004 to AFM SB.5.2 and Shorts Advance Amendment Bulletin 1/2004 to AFM SB.6.2 is identical, except for the AFM number shown on the top of the document pages. Therefore, if an operator inserted the advance amendment bulletin intended for AFM SB.5.2 into AFM SB.6.2 or vise versa, before the effective date of this AD, the intent of the AFM revision required by paragraph (g) of this AD has been met, and is, therefore, acceptable for compliance with that requirement.

Conclusion

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

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable in a U.S. court of law. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information. We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are described in a separate paragraph of the AD. These requirements, if any, take precedence over the actions copied from the MCAI.

Costs of Compliance

We estimate that this AD will affect 54 products of U.S. registry.

The actions that are required by AD 2006–12–18 and retained in this AD take about 41 work-hours per product, at an average labor rate of $85 per work hour. Required parts cost about $10 per product. Based on these figures, the estimated cost of the currently required actions is $3,495 per product.

We estimate that it would take about 1 work-hour per product to comply with the new basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the AD on U.S. operators to be $4,590, or $85 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone

(800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–14644 (71 FR 34801, June 16, 2006) and adding the following new AD:

2010–24–06 Short Brothers PLC: Amendment 39–16525. Docket No. FAA–2010–0225; Directorate Identifier 2009–NM–203–AD.

Effective Date

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

Affected ADs

(b) This AD supersedes AD 2006–12–18, Amendment 39–14644.

Applicability

(c) This AD applies to all Short Brothers PLC Model SD3–60 SHERPA, SD3–SHERPA, SD3–30, and SD3–60 airplanes, certificated in any category.

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

Subject

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

Reason

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

Subsequent to accidents involving Fuel Tank System explosions in flight * * * and on ground, the FAA published Special Federal Aviation Regulation 88 (SFAR88) in June 2001. SFAR 88 required a safety review of the aircraft Fuel Tank System to determine that the design meets the requirements of FAR [Federal Aviation Regulation] § 25.901 and § 25.981(a) and (b).

A similar regulation has been recommended by the JAA [Joint Aviation Authorities] to the European National Aviation Authorities in JAA letter 04/00/02/07/03–L024 of 3 February 2003. The review was requested to be mandated by NAA's [National Airworthiness Authorities] using JAR [Joint Aviation Requirement] § 25.901(c), § 25.1309.

In August 2005 EASA [European Aviation Safety Agency] published a policy statement on the process for developing instructions for maintenance and inspection of Fuel Tank System ignition source prevention (EASA D 2005/CPRO, *http://www.easa.eu.int/home/cert_policy_statements_en.html*) that also included the EASA expectations with regard to compliance times of the corrective actions on the unsafe and the not unsafe part of the harmonised design review results. On a global scale the TC [type certificate] holders committed themselves to the EASA published compliance dates (see EASA policy statement). The EASA policy statement has been revised in March 2006: The date of 31–12–2005 for the unsafe related actions has now been set at 01–07–2006.

Fuel Airworthiness Limitations are items arising from a systems safety analysis that have been shown to have failure mode(s) associated with an 'unsafe condition' as defined in FAA's memo 2003–112–15 'SFAR 88—Mandatory Action Decision Criteria'. These are identified in Failure Conditions for which an unacceptable probability of ignition risk could exist if specific tasks and/or practices are not performed in accordance with the manufacturers' requirements.

This EASA Airworthiness Directive mandates the Fuel System Airworthiness Limitations, comprising maintenance/inspection tasks and Critical Design Control Configuration Limitations (CDCCL) for the type of aircraft, that resulted from the design reviews and the JAA recommendation and EASA policy statement mentioned above.

Revision History: PAD [proposed airworthiness directive] 06–018R1 has been issued to endorse comments received for PAD 06–018 and due to the change of the EASA policy statement on fuel tank safety on March 2006.

Compliance

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

Restatement of Requirements of AD 2006–12–18

Revision of Airplane Flight Manual (AFM)

(g) Within 30 days after July 21, 2006 (the effective date of AD 2006–12–18), revise the Limitations and Normal Procedures sections of the AFMs as specified in Table 1 of this AD to include the information in the applicable Shorts advance amendment bulletins as specified in Table 1 of this AD. The advance amendment bulletins address operation during icing conditions and fuel system failures. Thereafter, operate the airplane according to the limitations and procedures in the applicable advance amendment bulletin.

Note 2: The requirements of paragraph (g) of this AD may be done by inserting a copy of the applicable advance amendment bulletin into the AFM. When the applicable advance amendment bulletin has been included in general revisions of the AFM, the general revisions may be inserted into the AFM and the advance amendment bulletin may be removed, provided the relevant information in the general revision is identical to that in the advance amendment bulletin.

TABLE 1—AFM REVISIONS

Airplane model—	Shorts advance amendment bulletin—	AFM—
SD3–30 airplanes	1/2004, dated July 13, 2004	SBH.3.2, SBH.3.3, SBH.3.6, SBH.3.7, SBH.3.8, and SB.3.9.
SD3–60 airplanes	1/2004, dated July 13, 2004	SB.4.3, SB.4.6, and SB.4.8.
SD3–60 SHERPA airplanes	1/2004, dated July 13, 2004	SB.6.2.
SD3–SHERPA airplanes	1/2004, dated July 13, 2004	SB.5.2.

Revision of Airworthiness Limitation (AWL) Section

(h) Within 180 days after July 21, 2006: Revise the AWL section of the Instructions for Continued Airworthiness by incorporating airplane maintenance manual (AMM) Sections 5–20–01 and 5–20–02 as introduced by the Shorts temporary revisions (TR) specified in Table 2 of this AD into the AWL section of the AMMs for the airplane models specified in Table 2 of this AD, except as required by paragraph (j) of this AD. Thereafter, except as provided by paragraph (m)(1) of this AD, no alternative structural inspection intervals may be approved for the longitudinal skin joints in the fuselage shell.

Note 3: The requirements of paragraph (h) of this AD may be done by inserting a copy of the applicable TR into the applicable AMM. When the TR has been included in general revisions of the AMM, the general revisions may be inserted in the AMM and the TR may be removed, provided the relevant information in the general revision is identical to that in the TR.

TABLE 2—AMM TEMPORARY REVISIONS

Airplane model—	Temporary revision—	Date—	AMM—
SD3–30 airplanes	TR330–AMM–13	June 21, 2004	SD3–30 AMM.
SD3–30 airplanes	TR330–AMM–14	June 21, 2004	SD3–30 AMM.
SD3–60 airplanes	TR360–AMM–33	July 27, 2004	SD3–60 AMM.
SD3–60 airplanes	TR360–AMM–34	July 27, 2004	SD3–60 AMM.
SD3–60 SHERPA airplanes	TRSD360S–AMM–14	July 29, 2004	SD3–60 SHERPA AMM.
SD3–60 SHERPA airplanes	TRSD360S–AMM–15	July 29, 2004	SD3–60 SHERPA AMM.
SD3–SHERPA airplanes	TRSD3S–AMM–15	July 28, 2004	SD3 SHERPA AMM.
SD3–SHERPA airplanes	TRSD3S–AMM–16	July 28, 2004	SD3 SHERPA AMM.

Resistance Check, Inspection, and Jumper Installation

(i) Within 180 days after July 21, 2006: Perform the insulation resistance check, general visual inspections, and bonding jumper wire installations; in accordance with Shorts Service Bulletin SD330–28–37, SD360–28–23, SD360 SHERPA–28–3, or SD3 SHERPA–28–2; all dated June 2004; as applicable. If any defect or damage is discovered during any inspection or check required by this AD, before further flight, repair the defect or damage using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; the Civil Aviation Authority (CAA) (or its delegated agent); or EASA (or its delegated agent).

Note 4: For the purposes of this AD, a general visual inspection is: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

New Requirements of This AD

Revision of AWL Section: New Limitations and CDCCLs

(j) Within 90 days after the effective date of this AD: Revise the AWL section of the Instructions for Continued Airworthiness by incorporating maintenance manual Sections 5–20–01 and 5–20–02 as introduced by the Bombardier and Shorts TRs specified in Table 3 of this AD into the AWL section of the maintenance manuals for the airplane models specified in Table 3 of this AD. Doing this revision terminates the requirement to incorporate the temporary revisions specified in paragraph (h) of this AD. After doing this revision the temporary revisions required by paragraph (h) of this AD may be removed.

TABLE 3—NEWLY REQUIRED MAINTENANCE MANUAL TEMPORARY REVISIONS

Model—	Temporary revision—	Date—	Manual—
SD3–30 airplanes	Shorts TR TR330–AMM–35	June 6, 2006	Shorts SD3–30 Maintenance Manual (MM).
SD3–30 airplanes	Shorts TR TR330–AMM–36	June 6, 2006	Shorts SD3–30 MM.
SD3–60 airplanes	Bombardier TR TR360–AMM–55	November 11, 2005	Bombardier SD3–60 AMM.
SD3–60 airplanes	Bombardier TR TR360–AMM–56	November 11, 2005	Bombardier SD3–60 AMM.
SD3–60 SHERPA airplanes	Shorts TR TRSD360S–AMM–35	June 27, 2006	Shorts SD3–60 SHERPA MM.
SD3–60 SHERPA airplanes	Shorts TR TRSD360S–AMM–36	June 27, 2006	Shorts SD3–60 SHERPA MM.
SD3–SHERPA airplanes	Shorts TR TRSD3S–AMM–36	June 19, 2006	Shorts SD3–SHERPA MM.
SD3–SHERPA airplanes	Shorts TR TRSD3S–AMM–37	June 19, 2006	Shorts SD3–SHERPA MM.

Note 5: The requirements of paragraph (j) of this AD may be done by inserting a copy of the applicable TR into the applicable maintenance manual. When the TR has been included in general revisions of the AMM, the general revisions may be inserted in the AMM and the TR may be removed, provided the relevant information in the general revision is identical to that in the TR.

(k) After accomplishing the actions specified in paragraph (j) of this AD, no alternative inspections, inspection intervals, or CDCCLs may be used unless the inspections, intervals, or CDCCLs are approved as an alternative method of compliance (AMOC), in accordance with the procedures specified in paragraph (m) of this AD.

Explanation of CDCCL Requirements

Note 6: Notwithstanding any other maintenance or operational requirements, components that have been identified as airworthy or installed on the affected airplanes before the revision of the AMM, as required by paragraph (h) or (j) of this AD, do not need to be reworked in accordance with the CDCCLs. However, once the AMM has been revised, future maintenance actions on these components must be done in accordance with the CDCCLs.

Credit for Actions Accomplished in Accordance With Other Service Information

(l) Revising the AFM, as required by paragraph (g) of this AD, by inserting Shorts Advance Amendment Bulletin 1/2004, dated 7/13/04, for Model SD3–60 Sherpa airplanes, into AFM SB.5.2; or Shorts Advance Amendment Bulletin 1/2004, dated 7/13/04, for Model SD3-sherpa airplanes, into AFM SB.6.2; before the effective date of this AD is acceptable for compliance with the AFM revision required by paragraph (g) of this AD.

FAA AD Differences

Note 7: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your

principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

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

Related Information

(n) Refer to MCAI EASA Airworthiness Directive 2006–0198, dated July 11, 2006; Shorts Service Bulletins SD330–28–37, SD360–28–23, SD360 SHERPA–28–3, and SD3 SHERPA–28–2, all dated June 2004; and the service information listed in Tables 1, 2, and 3 of this AD; for related information.

Material Incorporated by Reference

(o) You must use the service information contained in Table 4 of this AD, as applicable, to do the actions required by this AD, unless the AD specifies otherwise.

TABLE 4—ALL MATERIAL INCORPORATED BY REFERENCE

Document	Date	Manual
Shorts Advance Amendment Bulletin 1/2004	July 13, 2004	Shorts Airplane Flight Manuals (AFMs) SBH.3.2, SBH.3.3, SBH.3.6, SBH.3.7, SBH.3.8, and SB.3.9.
Shorts Advance Amendment Bulletin 1/2004	July 13, 2004	Shorts AFMs SB.4.3, SB.4.6, and SB.4.8.
Shorts Advance Amendment Bulletin 1/2004	July 13, 2004	Shorts AFM SB.5.2.
Shorts Advance Amendment Bulletin 1/2004	July 13, 2004	Shorts AFM SB.6.2.
Shorts TR330–AMM–13	June 21, 2004	Shorts SD3–30 Airplane Maintenance Manual (AMM).
Shorts TR330–AMM–14	June 21, 2004	Shorts SD3–30 AMM.
Shorts TR360–AMM–33	July 27, 2004	Shorts SD3–60 AMM.
Shorts TR360–AMM–34	July 27, 2004	Shorts SD3–60 AMM.
Shorts TRSD360S–AMM–14	July 29, 2004	Shorts SD3–60 SHERPA AMM.
Shorts TRSD360S–AMM–15	July 29, 2004	Shorts SD3–60 SHERPA AMM.
Shorts TRSD3S–AMM–15	July 28, 2004	Shorts SD3 SHERPA AMM.
Shorts TRSD3S–AMM–16	July 28, 2004	Shorts SD3 SHERPA AMM.
Shorts Service Bulletin SD330–28–37	June 2004	None.
Shorts Service Bulletin SD360–28–23	June 2004	None.
Shorts Service Bulletin SD360 SHERPA–28–3	June 2004	None.
Shorts Service Bulletin SD3 SHERPA–28–2	June 2004	None.
Shorts TR TR330–AMM–35	June 6, 2006	Shorts SD3–30 Maintenance Manual (MM).
Shorts TR TR330–AMM–36	June 6, 2006	Shorts SD3–30 MM.
Bombardier TR TR360–AMM–55	November 11, 2005	Bombardier SD3–60 AMM.
Bombardier TR TR360–AMM–56	November 11, 2005	Bombardier SD3–60 AMM.
Shorts TR TRSD360S–AMM–35	June 27, 2006	Shorts SD3–60 SHERPA MM.
Shorts TR TRSD360S–AMM–36	June 27, 2006	Shorts SD3–60 SHERPA MM.
Shorts TR TRSD3S–AMM–36	June 19, 2006	Shorts SD3–SHERPA MM.
Shorts TR TRSD3S–AMM–37	June 19, 2006	Shorts SD3–SHERPA MM.

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

TABLE 5—NEW MATERIAL INCORPORATED BY REFERENCE

Document	Date	Manual
Shorts TR TR330–AMM–35	June 6, 2006	Shorts SD3–30 MM.
Shorts TR TR330–AMM–36	June 6, 2006	Shorts SD3–30 MM.
Bombardier TR TR360–AMM–55	November 11, 2005	Bombardier SD3–60 AMM.
Bombardier TR TR360–AMM–56	November 11, 2005	Bombardier SD3–60 AMM.
Shorts TR TRSD360S–AMM–35	June 27, 2006	Shorts SD3–60 SHERPA MM.
Shorts TR TRSD360S–AMM–36	June 27, 2006	Shorts SD3–60 SHERPA MM.
Shorts TR TRSD3S–AMM–36	June 19, 2006	Shorts SD3–SHERPA MM.
Shorts TR TRSD3S–AMM–37	June 19, 2006	Shorts SD3–SHERPA MM.

(2) The Director of the Federal Register previously approved the incorporation by reference of the service information contained in Table 6 of this AD on July 21, 2006 (71 FR 34801, June 16, 2006).

TABLE 6—MATERIAL PREVIOUSLY INCORPORATED BY REFERENCE

Document	Date	Manual
Shorts Advance Amendment Bulletin 1/2004	July 13, 2004	Shorts Airplane Flight Manuals (AFMs) SBH.3.2, SBH.3.3, SBH.3.6, SBH.3.7, SBH.3.8, and SB.3.9.
Shorts Advance Amendment Bulletin 1/2004	July 13, 2004	Shorts AFMs SB.4.3, SB.4.6, and SB.4.8.
Shorts Advance Amendment Bulletin 1/2004	July 13, 2004	Shorts AFM SB.5.2.
Shorts Advance Amendment Bulletin 1/2004	July 13, 2004	Shorts AFM SB.6.2.
Shorts Temporary Revision TR330–AMM–13 ...	June 21, 2004	SD3–30 AMM.
Shorts Temporary Revision TR330–AMM–14 ...	June 21, 2004	SD3–30 AMM.
Shorts Temporary Revision TR360–AMM–33 ...	July 27, 2004	SD3–60 AMM.
Shorts Temporary Revision TR360–AMM–34 ...	July 27, 2004	SD3–60 AMM.
Shorts Temporary Revision TRSD360S–AMM–14.	July 29, 2004	SD3–60 SHERPA AMM.
Shorts Temporary Revision TRSD360S–AMM–15.	July 29, 2004	SD3–60 SHERPA AMM.
Shorts Temporary Revision TRSD3S–AMM–15	July 28, 2004	SD3 SHERPA AMM.
Shorts Temporary Revision TRSD3S–AMM–16	July 28, 2004	SD3 SHERPA AMM.
Shorts Service Bulletin SD330–28–37	June 2004	None.
Shorts Service Bulletin SD360–28–23	June 2004	None.
Shorts Service Bulletin SD360 SHERPA–28–3	June 2004	None.
Shorts Service Bulletin SD3 SHERPA–28–2	June 2004	None.

(3) For service information identified in this AD, contact Short Brothers PLC, Airworthiness, P.O. Box 241, Airport Road, Belfast, BT3 9DZ Northern Ireland; telephone +44(0)2890–462469; fax +44(0)2890–468444; e-mail *michael.mulholland@aero.bombardier.com;* Internet *http://www.bombardier.com.*

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

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

Issued in Renton, Washington, on November 10, 2010.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–30 Filed 1–11–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0622; Directorate Identifier 2009–CE–034–AD; Amendment [39–16570; AD 2009–18–03 R1]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–6, PC–6–H1, PC–6–H2, PC–6/350, PC–6/350–H1, PC–6/350–H2, PC–6/A, PC–6/A–H1, PC–6/A–H2, PC–6/B–H2, PC–6/B1–H2, PC–6/B2–H2, PC–6/B2–H4, PC–6/C–H2, and PC–6/C1–H2 Airplanes

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

ACTION: Final rule.

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

Findings of corrosion, wear and cracks in the upper wing strut fittings on some PC–6 aircraft have been reported in the past. It is possible that the spherical bearing of the wing strut fittings installed in the underwing can be loose in the fitting or cannot rotate because of corrosion. In this condition, the joint cannot function as designed and fatigue cracks may then develop. Undetected cracks, wear and/or corrosion in this area could cause failure of the upper attachment fitting, leading to failure of the wing structure and subsequent loss of control of the aircraft.

To address this problem, FOCA published AD TM–L Nr. 80.627–6/Index 72–2 and HB–2006–400 and EASA published AD 2007–0114 to require specific inspections and to obtain a fleet status. Since the issuance of AD 2007–0114, the reported data proved that it was necessary to establish and require repetitive inspections.

EASA published Emergency AD 2007–0241–E to extend the applicability and to require repetitive eddy current and visual inspections of the upper wing strut fitting for evidence of cracks, wear and/or corrosion and examination of the spherical bearing and replacement of cracked fittings. Collected data received in response to Emergency AD 2007–0241–E resulted in the issuance of EASA AD 2007–0241R1 that permitted extending the intervals for the repetitive eddy current and visual inspections from 100 Flight Hours (FH) to 300 FH and from 150 Flight Cycles (FC) to 450 FC, respectively. In addition, oversize bolts were introduced by Pilatus PC–6 Service Bulletin (SB) 57–005 R1 and the fitting replacement procedure was adjusted accordingly.

Based on fatigue test results, EASA AD 2007–0241R2 was issued to extend the repetitive inspection interval to 1100 FH or 12 calendar months, whichever occurs first, and to delete the related flight cycle intervals and the requirement for the "Mild Corrosion Severity Zone". In addition, some editorial changes have been made for reasons of standardization and readability.

Revision 3 of this AD referred to the latest revision of the PC–6 Aircraft Maintenance Manual (AMM) Chapter 5 limitations which have included the same repetitive inspection intervals and procedures already mandated in the revision 2 of AD 2007–0241. Besides the inspections, in the latest revision of the PC–6 AMM, the replacement procedures for the fittings were included.

Additionally, EASA AD 2007–0241R3 introduced the possibility to replace the wing strut fitting with a new designed wing strut

fitting. With this optional part replacement, in the repetitive inspection procedure the 1100 FH interval is deleted so that only calendar defined intervals of inspections remained applicable.

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

DATES: This AD becomes effective February 16, 2011.

As of October 1, 2009 (74 FR 43636, August 27, 2009), the Director of the Federal Register approved the incorporation by reference of Pilatus Aircraft Ltd. Pilatus PC–6 Service Bulletin No. 57–005, REV No. 2, dated May 19, 2008; and Chapter 57–00–02 of Pilatus Aircraft Ltd. Pilatus PC–6 Aircraft Maintenance Manual, dated November 30, 2008 (referenced as revision 9 in EASA AD No.: 2007–0241R3) listed in this AD.

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

For service information identified in this AD, contact PILATUS AIRCRAFT LTD., Customer Service Manager, CH–6371 STANS, Switzerland; telephone: +41 (0) 41 619 65 01; fax: +41 (0) 41 619 65 76; Internet: *http://www.pilatus-aircraft.com*. You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on October 7, 2010 (75 FR 62005), and proposed to revise AD 2009–18–03, Amendment 39–15999 (74 FR 43636, August 27, 2009).

Since we issued AD 2009–18–03, Pilatus has updated their maintenance programs with new requirements and limitations. Another AD action, AD 2011–01–14, requires the incorporation of the updated maintenance requirements into the airworthiness limitations section of the instructions for continued airworthiness. Those updated maintenance requirements include the repetitive inspections for the wing strut fittings and the spherical bearings currently included in AD 2009–18–03.

The NPRM proposed to correct an unsafe condition for the specified products. The MCAI states that:

Findings of corrosion, wear and cracks in the upper wing strut fittings on some PC–6 aircraft have been reported in the past. It is possible that the spherical bearing of the wing strut fittings installed in the underwing can be loose in the fitting or cannot rotate because of corrosion. In this condition, the joint cannot function as designed and fatigue cracks may then develop. Undetected cracks, wear and/or corrosion in this area could cause failure of the upper attachment fitting, leading to failure of the wing structure and subsequent loss of control of the aircraft.

To address this problem, FOCA published AD TM–L Nr. 80.627–6/Index 72–2 and HB–2006–400 and EASA published AD 2007–0114 to require specific inspections and to obtain a fleet status. Since the issuance of AD 2007–0114, the reported data proved that it was necessary to establish and require repetitive inspections.

EASA published Emergency AD 2007–0241–E to extend the applicability and to require repetitive eddy current and visual inspections of the upper wing strut fitting for evidence of cracks, wear and/or corrosion and examination of the spherical bearing and replacement of cracked fittings. Collected data received in response to Emergency AD 2007–0241–E resulted in the issuance of EASA AD 2007–0241R1 that permitted extending the intervals for the repetitive eddy current and visual inspections from 100 Flight Hours (FH) to 300 FH and from 150 Flight Cycles (FC) to 450 FC, respectively. In addition, oversize bolts were introduced by Pilatus PC–6 Service Bulletin (SB) 57–005 R1 and the fitting replacement procedure was adjusted accordingly.

Based on fatigue test results, EASA AD 2007–0241R2 was issued to extend the repetitive inspection interval to 1100 FH or 12 calendar months, whichever occurs first, and to delete the related flight cycle intervals and the requirement for the "Mild Corrosion Severity Zone". In addition, some editorial changes have been made for reasons of standardization and readability.

Revision 3 of this AD referred to the latest revision of the PC–6 Aircraft Maintenance Manual (AMM) Chapter 5 limitations which have included the same repetitive inspection intervals and procedures already mandated in the revision 2 of AD 2007–0241. Besides the inspections, in the latest revision of the PC–6 AMM, the replacement procedures for the fittings were included.

Additionally, EASA AD 2007–0241R3 introduced the possibility to replace the wing strut fitting with a new designed wing strut fitting. With this optional part replacement, in the repetitive inspection procedure the 1100 FH interval is deleted so that only calendar defined intervals of inspections remained applicable.

The aim of this new revision is to only mandate the initial inspection requirement and consequently to limit its applicability to aeroplanes which are not already in compliance with EASA AD 2007–0241R3. All aeroplanes which are in compliance with EASA AD 2007–0241R3 have to follow the repetitive inspection requirements as described in Pilatus PC–6 AMM Chapter 04–00–00, Document Number 01975, Revision 12 and the Airworthiness Limitations (ALS) Document Number 02334 Revision 1 mandated by EASA AD 2010–0176. Therefore the repetitive inspection requirements corresponding paragraphs have been deleted in this new EASA AD revision. The paragraph numbers of EASA AD 2007–0241R numbering has been maintained for referencing needs.

Comments

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

Request for Clarification on Applicability

Pilatus Aircraft commented that there is no consistency between FAA Directorate Identifier 2010–CE–047–AD and FAA Directorate Identifier 2009–CE–034–AD regarding the applicability of airplanes in regards to the manufacturer serial numbers (MSN) on the Fairchild PC–6 airplanes.

The FAA agrees that the applicability of airplanes needs corrected. We will change the applicability to clarify that some specific MSNs can also be identified as Fairchild Republic Company PC–6 airplanes, Fairchild Industries PC–6 airplanes, Fairchild Heli Porter PC–6 airplanes, or Fairchild-Hiller Corporation PC–6 airplanes.

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

We might also have required different actions in this AD from those in the

MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect 50 products of U.S. registry. We also estimate that it will take about 7 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of this AD on U.S. operators to be $29,750, or $595 per product.

In addition, we estimate that any necessary follow-on actions will take about 30 work-hours and require parts costing $5,000, for a cost of $7,550 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–15999 (74 FR 43636, August 27, 2009) and adding the following new AD:

2009–18–03 R1 Pilatus Aircraft Limited: Amendment 39–16570; Docket No. FAA–2009–0622; Directorate Identifier 2009–CE–034–AD.

Effective Date

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

Affected ADs

(b) This AD revises AD 2009–18–03, Amendment 39–15999.

Applicability

(c) This AD applies to Pilatus Aircraft Ltd. Models PC–6, PC–6–H1, PC–6–H2, PC–6/350, PC–6/350–H1, PC–6/350–H2, PC–6/A, PC–6/A–H1, PC–6/A–H2, PC–6/B–H2, PC–6/B1–H2, PC–6/B2–H2, PC–6/B2–H4, PC–6/C–H2, and PC–6/C1–H2 airplanes, all manufacturer serial number (MSN) 101 through 999, and MSN 2001 through 2092, certificated in any category.

Note 1: For MSN 2001–2092, these airplanes are also identified as Fairchild Republic Company PC–6 airplanes, Fairchild Industries PC–6 airplanes, Fairchild Heli Porter PC–6 airplanes, or Fairchild-Hiller Corporation PC–6 airplanes.

Subject

(d) Air Transport Association of America (ATA) Code 57: Wings.

Reason

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

Findings of corrosion, wear and cracks in the upper wing strut fittings on some PC–6 aircraft have been reported in the past. It is possible that the spherical bearing of the wing strut fittings installed in the underwing can be loose in the fitting or cannot rotate because of corrosion. In this condition, the joint cannot function as designed and fatigue cracks may then develop. Undetected cracks, wear and/or corrosion in this area could cause failure of the upper attachment fitting, leading to failure of the wing structure and subsequent loss of control of the aircraft.

To address this problem, FOCA published AD TM–L Nr. 80.627–6/Index 72–2 and HB–2006–400 and EASA published AD 2007–0114 to require specific inspections and to obtain a fleet status. Since the issuance of AD 2007–0114, the reported data proved that it was necessary to establish and require repetitive inspections.

EASA published Emergency AD 2007–0241–E to extend the applicability and to require repetitive eddy current and visual inspections of the upper wing strut fitting for evidence of cracks, wear and/or corrosion and examination of the spherical bearing and replacement of cracked fittings. Collected data received in response to Emergency AD 2007–0241–E resulted in the issuance of EASA AD 2007–0241R1 that permitted extending the intervals for the repetitive eddy current and visual inspections from 100 Flight Hours (FH) to 300 FH and from 150 Flight Cycles (FC) to 450 FC, respectively. In addition, oversize bolts were introduced by Pilatus PC–6 Service Bulletin (SB) 57–005 R1 and the fitting replacement procedure was adjusted accordingly.

Based on fatigue test results, EASA AD 2007–0241R2 was issued to extend the repetitive inspection interval to 1100 FH or 12 calendar months, whichever occurs first, and to delete the related flight cycle intervals and the requirement for the "Mild Corrosion Severity Zone". In addition, some editorial changes have been made for reasons of standardization and readability.

Revision 3 of this AD referred to the latest revision of the PC–6 Aircraft Maintenance Manual (AMM) Chapter 5 limitations which have included the same repetitive inspection intervals and procedures already mandated in the revision 2 of AD 2007–0241. Besides the inspections, in the latest revision of the PC–6 AMM, the replacement procedures for the fittings were included.

Additionally, EASA AD 2007–0241R3 introduced the possibility to replace the wing strut fitting with a new designed wing strut fitting. With this optional part replacement, in the repetitive inspection procedure the 1100 FH interval is deleted so that only calendar defined intervals of inspections remained applicable.

The aim of this new revision is to only mandate the initial inspection requirement and consequently to limit its applicability to aeroplanes which are not already in

compliance with EASA AD 2007–0241R3. All aeroplanes which are in compliance with EASA AD 2007–0241R3 have to follow the repetitive inspection requirements as described in Pilatus PC–6 AMM Chapter 04–00–00, Document Number 01975, Revision 12 and the Airworthiness Limitations (ALS) Document Number 02334 Revision 1 mandated by EASA AD 2010–0176. Therefore the repetitive inspection requirements corresponding paragraphs have been deleted in this new EASA AD revision. The paragraph numbers of EASA AD 2007–0241R numbering has been maintained for referencing needs.

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

Actions and Compliance

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

(1) *For affected oirplones that hove not hod both wing strut fittings replaced within the last 100 hours time-in-service (TIS) before September 26, 2007 (the effective dote of AD 2007–19–14), or have not been inspected using an eddy current inspection method following Pilatus Aircraft Ltd. Pilatus PC–6 Service Bulletin No. 57–004, dated April 16, 2007, within the last 100 hours TIS before September 26, 2007 (the effective date of AD 2007–19–14):* Before further flight after either September 26, 2007 (the effective date of AD 2007–19–14), or October 1, 2009 (the effective date of AD 2009–18–03), visually inspect the upper wing strut fittings and examine the spherical bearings following the Pilatus Aircraft Ltd. Pilatus PC–6 Service Bulletin No. 57–005, REV No. 2, dated May 19, 2008.

(2) *For all affected airplones:* Within 25 hours TIS after September 26, 2007 (the effective date of AD 2007–19–14), or within 30 days after September 26, 2007 (the effective date of AD 2007–19–14), whichever occurs first, visually and using eddy current methods, inspect the upper wing strut fittings and examine the spherical bearings following Pilatus Aircraft Ltd. Pilatus PC–6 Service Bulletin No. 57–005, REV No. 2, dated May 19, 2008.

(3) You may also take "unless already done" credit for any inspection specified in paragraphs (f)(1) or (f)(2) of this AD if done before October 1, 2009 (the effective date retained from AD 2009–18–03) following Pilatus Aircraft Ltd. Pilatus PC–6 Service Bulletin No. 57–005, dated August 30, 2007; or Pilatus Aircraft Ltd. Pilatus PC–6 Service Bulletin No. 57–005, REV No. 1, dated November 19, 2007.

(4) *For all affected airplanes:* If during any inspection required by paragraphs (f)(1) or (f)(2) of this AD you find cracks in the upper wing strut fitting or the spherical bearing is not in conformity, before further flight, replace the cracked upper wing strut fitting and/or the nonconforming spherical bearing following Chapter 57–00–02 of Pilatus Aircraft Ltd. Pilatus PC–6 Aircraft Maintenance Manual, dated November 30, 2008.

Note 1: AD 2011–01–14 requires the incorporation of the updated maintenance requirements into the airworthiness limitations section of the instructions for continued airworthiness. Those updated maintenance requirements include the repetitive inspections for the wing strut fittings and the spherical bearings. This revised AD removes those repetitive inspections.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternotive Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *Attn:* Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4059; *fax:* (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI EASA AD No.: 2007–0241R4, dated August 31, 2010; Pilatus Aircraft Ltd. Pilatus PC–6 Service Bulletin No. 57–005, REV No. 2, dated May 19, 2008; Pilatus Aircraft Ltd. Pilatus PC–6 Service Bulletin No. 57–005, REV No. 1, dated November 19, 2007; Pilatus Aircraft Ltd. Pilatus PC–6 Service Bulletin No. 57–005, dated August 30, 2007; Pilatus Aircraft Ltd. Pilatus PC–6 Service Bulletin No. 57–004, dated April 16, 2007; and Chapter 57–00–02 of Pilatus Aircraft Ltd. Pilatus PC–6 Aircraft Maintenance Manual, dated November 30, 2008, for related information.

Material Incorporated by Reference

(h) You must use Pilatus Aircraft Ltd. Pilatus PC–6 Service Bulletin No. 57–005, REV No. 2, dated May 19, 2008; and Chapter 57–00–02 of Pilatus Aircraft Ltd. Pilatus PC–6 Aircraft Maintenance Manual, dated November 30, 2008 (referenced as revision 9 in EASA AD No.: 2007–0241R3), to do the actions required by this AD, unless the AD specifies otherwise.

(1) On October 1, 2009 (74 FR 43636, August 27, 2009), the Director of the Federal Register previously approved the incorporation by reference of Pilatus Aircraft Ltd. Pilatus PC–6 Service Bulletin No. 57–005, REV No. 2, dated May 19, 2008; and Chapter 57–00–02 of Pilatus Aircraft Ltd. Pilatus PC–6 Aircraft Maintenance Manual, dated November 30, 2008 (referenced as revision 9 in EASA AD No.: 2007–0241R3).

(2) For service information identified in this AD, contact PILATUS AIRCRAFT LTD., Customer Service Manager, CH–6371 STANS, Switzerland; *telephone:* +41 (0) 41 619 65 01; *fax:* +41 (0) 41 619 65 76; *Internet: http://www.pilatus-aircraft.com.*

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

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

Issued in Kansas City, Missouri, on December 28, 2010.

Earl Lawrence,

Monoger, Smoll Airplone Directorote, Aircraft Certificotion Service.

[FR Doc. 2010–33333 Filed 1–11–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0549; Directorate Identifier 2010–NM–109–AD; Amendment 39–16573; AD 2011–01–16]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD requires installing fuel level float and pressure switch in-line fuses on the wing forward spars and forward and aft auxiliary fuel tanks, depending on the airplane configuration. This AD was prompted by fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

DATES: This AD is effective February 16, 2011.

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

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; e-mail *dse.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Samuel Lee, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone 562–627–5262; fax 562–627–5210; e-mail *samuel.lee@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to the specified products. That NPRM was published in the **Federal Register** on June 18, 2010 (75 FR 34661). That NPRM proposed to require installing fuel level float and pressure switch in-line fuses on the wing forward spars and forward and aft auxiliary fuel tanks, depending on the airplane configuration.

Comments

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

Request To Clarify Applicability

American Airlines (American) requested that we clarify the applicability of the NPRM. That NPRM identified airplanes in the effectivity of Boeing Service Bulletin MD80–28–226, dated April 14, 2010, which specifies that airplanes are not affected unless the actions specified in McDonnell Douglas MD–80 Service Bulletin 28–054 or 28–058 have been done or the float switches have been installed. (These service bulletins are currently at Revision 1, dated April 15, 1992; and Revision 2, dated July 6, 1992; respectively.) American reports that it operates airplanes with switches incorporated in production, but not installed specifically in accordance with McDonnell Douglas MD–80 Service Bulletin 28–054 or 28–058. American therefore requests that we clarify the applicability of the proposed AD to specify whether airplanes equipped with the subject fuel float/pressure switches—regardless of the method of installation—are affected.

We agree to provide clarification. McDonnell Douglas MD–80 Service Bulletins 28–054 and 28–058 specify that the switches are installed in production on specified and subsequent fuselage numbers. If switches are installed using McDonnell Douglas Service Bulletin 28–054 or 28–058 or production equivalent, the actions of this AD are required. We have added Note 1 in this AD to clarify the applicability.

Change to the Installation Requirements

The NPRM referred to Boeing Service Bulletin MD80–28–226, dated April 14, 2010, as the appropriate source of service information for the proposed requirements. Boeing has identified errors in certain references identified in that service bulletin, and issued Service Bulletin Information Notice MD80–28–226 IN 01, dated April 23, 2010, to correct these errors. We have included these corrections in new paragraph (h) in this final rule.

Explanation of Change Made to the [Proposed] AD

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

Conclusion

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

Costs of Compliance

We estimate that this AD affects 640 airplanes of U.S. registry. The following table provides the estimated costs, depending on the airplane configuration, for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per product	Number of U.S.-registered airplanes	Fleet cost
Installation	Between 7 and 17.	$85	Between $817 and $1,725.	Between $1,412 and $3,170.	640	Between $903,680 and $2,028,800.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–01–16 The Boeing Company: Amendment 39–16573; Docket No. FAA–2010–0549; Directorate Identifier 2010–NM–109–AD.

Effective Date

(a) This AD is effective February 16, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to The Boeing Company Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes; certificated in any category; as identified in Boeing Service Bulletin MD80–28–226, dated April 14, 2010.

Note 1: The applicability of this AD is limited to airplanes on which switches are installed in accordance with McDonnell Douglas MD–80 Service Bulletin 28–054, dated April 8, 1991, or Revision 1, dated April 15, 1992; or McDonnell Douglas MD–80 Service Bulletin 28–058, dated April 8, 1991, Revision 1, dated August 2, 1991, or Revision 2, dated July 6, 1992; or production equivalent.

Subject

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

Unsafe Condition

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

Compliance

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

Fuse Installation

(g) Within 60 months after the effective date of this AD, install fuel level float and pressure switch in-line fuses, and do applicable wiring changes, in the applicable locations specified in paragraph (g)(1), (g)(2), or (g)(3) of this AD. Do the actions in accordance with the Accomplishment Instructions of Boeing Service Bulletin MD80–28–226, dated April 14, 2010, except as required by paragraph (h) of this AD.

(1) For Groups 1 through 6: On the left, right, and center wing forward spars.

(2) For Groups 7 and 8: On the left, right, and center wing forward spars, and aft auxiliary fuel tank.

(3) For Groups 9 through 11: On the left, right, and center wing forward spars, forward auxiliary fuel tank, and aft auxiliary fuel tank.

Exception to Service Bulletin Specifications

(h) Paragraph 3.B.1. of Boeing Service Bulletin MD80–28–226, dated April 14, 2010, for Groups 1 through 11, refers to the Boeing MD80 Airplane Maintenance Manual (AMM) defueling procedure MD80 AMM 12–13–00. The correct reference is Boeing MD80 AMM 12–11–01.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(j) For more information about this AD, contact Samuel Lee, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone 562–627–5262; fax 562–627–5210; e-mail *samuel.lee@faa.gov.*

Material Incorporated by Reference

(k) You must use Boeing Service Bulletin MD80–28–226, dated April 14, 2010, to do the actions required by this AD, unless the AD specifies otherwise.

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

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

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

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

Issued in Renton, Washington, on December 27, 2010.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–33345 Filed 1–11–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0014; Directorate Identifier 2010–CE–066–AD; Amendment 39–16577; AD 2011–02–04]

RIN 2120–AA64

Airworthiness Directives; M7 Aerospace LP (Type Certificate Previously Held by Fairchild Aircraft Incorporated) Models SA26–AT, SA26–T, SA226–AT, SA226–T, SA226–T(B), SA226–TC, SA227–AC (C–26A), SA227–AT, SA227–BC (C–26A), SA227–CC, SA227–DC (C–26B), and SA227–TT Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD requires repetitively inspecting the cockpit heated windshields for damage and replacing damaged windshields. This AD was prompted by reports from the windshield manufacturer of inner glass ply fracture. We are issuing this AD to detect and correct damage to the cockpit heated windshield, which could result in failure of the windshield with consequent rapid cabin decompression and loss of control of the airplane.

DATES: This AD is effective January 24, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publication listed in the AD as of January 24, 2011.

We must receive comments on this AD by February 28, 2011.

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

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

For service information identified in this AD, contact M7 Aerospace LP, 10823 NE Entrance Road, San Antonio, Texas 78216; telephone: (210) 824–9421; Internet: *http://www.m7aerospace.com.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust St., Kansas City, Missouri 64016. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Hung Nguyen, Aerospace Engineer, Fort Worth Airplane Certification Office, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137–0150; *phone:* (817) 222–5155; *fax:* (817) 222–5960; *e-mail: hung.v.nguyen@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We received reports from the windshield manufacturer of inner glass ply fractures found on 19 windshields over a 32-month period. As a result of the fractures, a windshield on one of the affected airplanes was reported to have failed completely.

This condition, if not corrected, could result in failure of the cockpit heated windshield, causing rapid cabin decompression and loss of control of the airplane.

Relevant Service Information

We reviewed M7 Aerospace Service Bulletins 26–56–001, 226–56–011, 227–56–012, and CC7–56–009, all dated December 1, 2010. These service bulletins describe procedures for repetitively inspecting the cockpit heated windshield for damage and replacing damaged windshields.

FAA's Determination

We are issuing 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.

AD Requirements

This AD requires accomplishing the actions specified in the service information described previously, except as discussed under "Differences Between the AD and the Service Information."

Interim Action

We consider this AD interim action. The design approval holder is currently developing a modification that will address the unsafe condition identified in this AD. Once this modification is developed, approved, and available, we might consider additional rulemaking.

FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because this condition could result in failure of the cockpit windshield. This failure could lead to rapid cabin decompression and loss of control of the airplane. Therefore, we find that notice and opportunity for prior public comment are impracticable and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2011–0014 and Directorate Identifier 2010–CE–066–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Costs of Compliance

We estimate that this AD affects 362 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspect the left-hand and right-hand cockpit heated windshield.	2 work-hours × $85 per hour = $170 per inspection cycle.	Not applicable ...	$170 per inspection cycle ...	$61,540 per inspection cycle.

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace/repair damaged windshield	40 work-hours per windshield × $85 per hour = $3,400 per windshield.	$14,055 per windshield	$17,455 per windshield.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–02–04 M7 Aerospace LP (Type Certificate Previously Held by Fairchild Aircraft Incorporated): Amendment 39–16577; Docket No. FAA–2011–0014 Directorate Identifier 2010–CE–066–AD.

Effective Date

(a) This AD is effective January 24, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to M7 Aerospace LP (type certificate previously held by Fairchild Aircraft Incorporated) Models SA26–AT, SA26–T, SA226–AT, SA226–T, SA226–T(B), SA226–TC, SA227–AC (C–26A), SA227–AT, SA227–BC (C–26A), SA227–CC, SA227–DC (C–26B), and SA227–TT airplanes, all serial numbers, that are certificated in any category.

Subject

(d) Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 5610, Flight Compartment Windows.

Unsafe Condition

(e) This AD was prompted by reports from the windshield manufacturer of inner glass ply fracture. We are issuing this AD to detect and correct damage to the cockpit heated windshield, which could result in failure of the windshield with consequent rapid cabin decompression and loss of control of the airplane.

Compliance

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

Inspection

(g) Within the next 21 days after January 24, 2011 (the effective date of this AD), inspect the cockpit heated windshields, part numbers 26–21126 and 27–19442, as applicable, for damage, *e.g.*, delamination, glass shear, and interlayer cracking. Do the inspection following M7 Aerospace Service Bulletins 26–56–001, 226–56–011, 227–56–012, and CC7–56–009, all dated December 1, 2010, as applicable.

(h) At the compliance times specified in table 1 of this AD, repetitively inspect the cockpit heated windshield for damage, *e.g.*, delamination, glass shear, and interlayer cracking. Do the inspections following M7 Aerospace Service Bulletins 26–56–001, 226–56–011, 227–56–012, and CC7–56–009, all dated December 1, 2010, as applicable.

TABLE 1—REPETITIVE INSPECTION COMPLIANCE TIMES

Category	If the installed cockpit heated windshield (new or repaired) has the following hours time-in-service (TIS)	Then repetitively inspect at intervals not-to-exceed
A	Less than 1,100	Every 150 hours TIS until the windshield accumulates 1,100 hours TIS, at which time inspect according to Category B.
B	1,100 to 5,000	Every 100 hours TIS until the windshield accumulates 5,001 hours TIS, at which time inspect according to Category C.
C	More than 5,000	Every 50 hours TIS.

(i) Before further flight after each inspection required in paragraphs (g) and (h) of this AD in which damage is found in the critical and semi-critical inspection areas, replace or repair the windshield as specified in M7 Aerospace Service Bulletins 26–56–001, 226–56–011, 227–56–012, and CC7–56–009, all dated December 1, 2010, as applicable.

(j) Within 30 days after each inspection required in paragraph (g) and (h) of this AD in which damage is found, report the results of the inspection to the FAA. Use the form (figure 1 of this AD) and submit it to the address specified in paragraph (n) of this AD.

Special Flight Permit

(k) Flights are limited to two pilot operations only. No single pilot operation allowed.

Paperwork Reduction Act Burden Statement

(l) 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.

AD 2011–02–04	
Airplane Model Number/Serial Number:	
Time-in-Service (TIS) of on cockpit heated windshield:	
Inspection results:	
Corrective Action Taken:	
Any Additional Information (Optional):	
Name:	
Telephone and/or E-mail Address:	
Date:	

Send report to: Hung Nguyen, Aerospace Engineer, Fort Worth Airplane Certification Office, FAA, 2601 Meacham Blvd., Fort Worth, TX 76137–0150; *phone:* (817) 222–5155; *fax:* (817) 222–5960; *e-mail: hung.v.nguyen@faa.gov.*

Figure 1

Alternative Methods of Compliance (AMOCs)

(m)(1) The Manager, Fort Worth Airplane Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. 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 Principal Maintenance Inspector or Principal Avionics Inspector, as appropriate, or lacking a principal inspector, your local Flight Standards District Office.

Related Information

(n) For more information about this AD, contact Hung Nguyen, Aerospace Engineer, Fort Worth Airplane Certification Office, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137–0150; *phone:* (817) 222–5155; *fax:* (817) 222–5960; *e-mail: hung.v.nguyen@faa.gov.*

Material Incorporated by Reference

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

TABLE 2—ALL MATERIAL INCORPORATED BY REFERENCE

Document	Revision	Date
M7 Aerospace Service Bulletin 26–56–001	N/A	December 1, 2010.
M7 Aerospace Service Bulletin 226–56–011	N/A	December 1, 2010.
M7 Aerospace Service Bulletin 227–56–012	N/A	December 1, 2010.

TABLE 2—ALL MATERIAL INCORPORATED BY REFERENCE—Continued

Document	Revision	Date
M7 Aerospace Service Bulletin CC7–56–009	N/A	December 1, 2010.

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

(3) For service information identified in this AD, contact M7 Aerospace LP, 10823 NE Entrance Road, San Antonio, Texas 78216; telephone: (210) 824–9421; Internet: *http://www.m7aerospace.com.*

(4) You may review copies of the service information at the FAA, Small Airplane Directorate, 901 Locust St., Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–2470.

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

Issued in Kansas City, Missouri, on January 5, 2011.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–457 Filed 1–11–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0529; Airspace Docket No. 10–ANM–3]

Establishment of Class E Airspace; Panguitch, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will establish Class E airspace at Panguitch, UT, to accommodate aircraft using a new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures at Panguitch Municipal Airport. This will improve the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Effective date, 0901 UTC, March 10, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On June 28, 2010, the FAA published in the **Federal Register** a NPRM to establish Class E airspace extending upward from 700 feet above the surface at Panguitch, UT (75 FR 36585). The FAA agreed with a comment received to also expand controlled airspace from 1,200 feet, and on October 18, 2010, published in the **Federal Register** a supplemental notice of proposed rulemaking to expand the proposed Class E 700 foot airspace to include Class E airspace from 1,200 feet above the surface at Panguitch, UT (75 FR 63730). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the supplemental proposal to the FAA. The FAA received one comment to an increase to the southern boundary of the 1,200′AGL airspace description. The FAA found merit in this comment, and will incorporate this change in the final rule. With the exception of editorial changes and the changes described above, this rule is the same as that proposed in the NPRM and SNPRM.

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

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E airspace extending upward from 700 feet above the surface, at Panguitch Municipal Airport, to accommodate IFR aircraft executing new RNAV GPS Standard Instrument Approach Procedures at the airport. This action is necessary for the safety and management of IFR operations at the airport.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Panguitch Municipal Airport, Panguitch, UT.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9U,

Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010 is amended as follows:

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

* * * * *

ANM UT E5 Panguitch, UT [New]

Panguitch Municipal Airport, UT
(Lat. 37°50′43″ N., long. 112°23′31″ W.)

That airspace extending from 700 feet above the surface within an 11.7-mile radius of the Panguitch Municipal Airport, and that airspace extending upward from 1,200 feet above the surface within an area bounded by lat. 38°25′00″ N., long. 112°32′00″ W.; to lat. 38°24′00″ N., long. 112°02′00″ W.; to lat. 37°52′00″ N., long. 111°47′00″ W.; to lat. 37°12′00″ N., long. 112°20′00″ W.; to lat. 37°12′00″ N., long. 112°56′00″ W.; to lat. 37°42′30″ N., long. 112°55′00″ W.; to lat. 37°43′00″ N., long. 112°43′00″ W.; thence to the point of beginning.

Issued in Seattle, Washington, on January 3, 2011.

John Warner,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2011–353 Filed 1–11–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0903; Airspace Docket No. 10–AWP–16]

Modification of Class E Airspace; Show Low, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will amend Class E airspace at Show Low, AZ, to accommodate aircraft using a new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures at Show Low Regional Airport. This will improve the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Effective date, 0901 UTC, March 10, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On October 22, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend controlled airspace at Show Low, AZ (75 FR 65255). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

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

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by adding additional Class E airspace extending upward from 700 feet above the surface, at Show Low Regional Airport, to accommodate IFR aircraft executing new RNAV (GPS) standard instrument approach procedures at the airport. This action is necessary for the safety and management of IFR operations.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes additional controlled airspace at Show Low Regional Airport, Show Low, AZ.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AWP AZ E5 Show Low, AZ [Modified]

Show Low Regional Airport, AZ
(Lat. 34°15′56″ N., long. 110°00′20″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the Show Low Regional Airport and within 3 miles each side of the 038° bearing of the Show Low Regional Airport extending from the 6.7-mile radius to 10 miles northeast of the airport, and within 2.1 miles each side of the 085° bearing of the Show Low Regional Airport extending from the 6.7-mile radius to 7.9 miles east of the airport; that airspace extending upward from 1,200 feet above the surface within an area bounded by a line beginning at lat. 34°35′00″ N., long. 109°51′00″ W.; to lat. 34°14′00″ N., long. 109°22′00″ W.; to lat. 33°49′00″ N., long. 110°36′00″ W.; to lat. 34°10′00″ N., long. 110°37′00″ W.; thence to the point of beginning.

Issued in Seattle, Washington, on January 5, 2011.

John Warner,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2011–356 Filed 1–11–11; 8:45 am]

BILLING CODE 4910–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1845 and 1852

RIN 2700–AD37

Government Property

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: NASA is issuing a final rule to revise the NASA FAR Supplement (NFS) to update Agency-level, property-related provisions, clauses, prescriptions and procedures to be consistent with changes made to Part 45 and Part 52.245 of the Federal Acquisition Regulation in Federal Acquisition Circular (FAC) 2005–17. FAC 2005–17 significantly rewrote FAR Part 45, Government Property, and changed property related definitions, provisions and clauses which are required to be used in all solicitations and contracts issued after the effective date of 14 June, 2007.

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

FOR FURTHER INFORMATION CONTACT: Carl Weber, NASA, Office of Procurement, Contract Management Division (Suite 5K80), (202) 358–1784, e-mail: *carl.c.weber@nasa.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

Federal Acquisition Circular (FAC 2005–17) implemented the final rule amending the Federal Acquisition Regulation (FAR) to simplify procedures, clarify language, and eliminate obsolete requirements related to the management and disposition of Government property in the possession of contractors. FAC 2005–17 significantly rewrote FAR Part 45, Government Property, and changed property-related definitions, provisions and clauses which are required to be used in all solicitations and contracts issued after the effective date of 14 June, 2007. The purpose of this final rule is to establish a new NASA FAR Supplement (NFS) Part 1845, Government Property, and related Agency-level solicitation provisions and contract clauses in NFS Subpart 1852.245, that are consistent with the rewrite of FAR Part 45. This rewrite of NFS Part 1845 and Subpart 1852.245 realigns Agency regulations with the new definitions, practices and policy of the FAR, a policy that fosters efficiency, flexibility, innovation and creativity while continuing to protect the Government's interest. In addition, this final rule includes Agency-level procedures, solicitation provisions, and contract clause language necessary to identify contractor-acquired assets which become capital assets of the Government, in order to comply with Statement of Federal Financial Accounting Standard (SFFAS) No. 6. NASA published a proposed rule at 73 FR 73202, December 2, 2008. The 60 day comment period for the proposed rule ended February 2, 2009. Three respondents provided comments for a total of 52 comments.

The public comments were considered by NASA in the formation of the final rule.

Comment 1: One respondent recommended that language in 1845.107–70(B)(5) be clarified to differentiate between government property acquired which the government has title to and property acquired under FAR 52.245–1 Alt 2, which is titled to the contractor.

Response: Concur. The word "Government" was appended to "property" in the language to differentiate between property acquired and titled to the contractor under the alternate and property titled to the Government.

Comment 2: One respondent recommended that the phrase "IPO's Center for transfer to the" be added to 1852.245–70, Alternate I as follows: (ii) If the Contractor determines that an item within NASA or Federal excess is suitable, it shall contact the Center Industrial Property Officer (IPO) to arrange for transfer of the item from the identified source to the *IPO's Center for transfer* to the contractor.

Response: Non-concur. With the issuance of the final rule, the process in Procurement Information Circular 05–07 will become obsolete. The process suggested is internal to NASA and would be addressed through Part 1845, and not thorough contract language. NASA may choose a variety of methods to effect a transfer.

Comment 3: One respondent recommended establishing a threshold for screening greater than $10,000 for items of property proposed for acquisition by institutions of higher education and allowing institutions to reject items if they are not technically sufficient.

Response: Non-concur. FAR Part 8 and 40 U.S.C. 524 require screening of agency inventory and other agencies' excess prior to new acquisitions whenever practicable. Though the screening practice may not always be productive, screening activity is not impracticable; therefore, we are required to perform it.

Comment 4: One respondent recommended changing the date for report submission at 1852.245–73(c)(1) from October 15 to October 30.

Response: Non-concur. The October 15 date is needed to allow sufficient time for contractor held property values to be compiled into NASA's annual financial statement.

Comment 5: One respondent recommended modifying 1852.245–79(c) to change the phrase "Government-furnished property" to "Government Property" to clarify that it applies to both Government-furnished and Contractor Acquired Government property.

Response: Concur. Change made.

Comment 6: One respondent recommended modifying 1852.245–79(c) to change "approval of the NASA Industrial Property Officer to "approval of the Plant Clearance Officer".

Response: Concur. Change made.

Comment 7: One respondent recommended that the reference to "Industrial Property Officer or Property Administrator" in 1845.501–70(b) be changed to only reference "Government Property Administrator".

Response: Non-concur. Within NASA, the Industrial Property Officer is the integral link between the contracting functions and the property administration functions and serves as the advisor to the Contracting Officer on property related topics. The reference to the Industrial Property Officer and Property Administrator will remain.

Comment 8: One respondent recommended that 1845.501–70(b) be changed to reflect that the Contracting Officer makes the final determination as to the adequacy of the contractor's proposed property management systems, standards and practices based on various inputs, including those of the Property Administrator and Industrial Property Officer.

Response: Concur. Language changed accordingly.

Comment 9: One respondent recommended that the reference to "Industrial Property Officer or Property Administrator" at 1845.501–70(b)(1) be changed to reference only the Property Administrator.

Response: Non-concur. NASA contracts may operate under circumstances that are unknown to the property administrator or differ from those applied by the property administrator's own organization. Within NASA, the Industrial Property Officer is the integral link between the contracting functions and the property administration functions and serves as the advisor to the Contracting Officer on

property related topics. Original language left intact.

Comment 10: One respondent recommended that DCMA's PCARSS system be used for all NASA contracts.

Response: Non-concur: NASA does not share all contractors with DOD. As a result, NASA may need to disposition property outside of PCARSS. Further, NASA, as a separate Federal agency maintains its own disposal processes and may choose to use them when it is in the agency's best interest.

Comment 11: One respondent recommended simplification of paragraph (a) of 1845.7101–2.

Response: Paragraph (a) of 1845.7101–2 was not proposed to be changed in the proposed rule, and was not published for comment, but may be reviewed for change in the future.

Comment 12: One respondent recommended that 1845–7101–2(c) be revised to incorporate a proactive approach to identification and correction of property data, though no specific language was provided.

Response: Non-concur. The NASA proposed changes to this paragraph were made only to omit obsolete FAR citations and the paragraph is otherwise still applicable. While the CO may take proactive measures to develop data for property being transferred, this remains an alternative procedure to be used when data is found to be insufficient by the contractor.

Comment 13: One respondent recommended deleting the entire clause at 1852.245–70.

Response: Partially concur. The requirement for screening for property for reuse is based on law, and therefore cannot be eliminated. In addition, the FAR requires the contracting officer to determine whether it is in the best interest for the Government to provide property. The scope of the clause was, however, limited to equipment requested after award.

Comment 14: One respondent recommended that we remove the requirement for contractors to hold employees liable for LDD&T as specified at 1852.245–71(a). Collective bargaining agreements, labor relations laws, State and local law may prohibit holding an employee liable for LDD&T of Government owned property.

Response: Partially concur. Although the language was unchanged from the previous NFS clause, and the liability requirement was ameliorated by the phrase "as appropriate", the language will be changed to read: "In accordance with FAR 52.245–1(h)(1) the contractor shall be liable for property lost, damaged, destroyed or stolen by the contractor or their employees when determined responsible by a NASA Property Survey Board, in accordance with the NASA guidance in this clause."

Comment 15: One respondent recommended that the language at 1852.245–71(b)(iii) be changed so that it is clear that contractors are not required to establish a property record until the property is titled to the government.

Response: Concur. 1852.245–71(b)(iii) is changed to read: "The Contractor shall establish a record for Government titled property as required by FAR 52.245–1 and shall maintain that record until accountability is accepted by the Government." The final sentence of the paragraph is deleted.

Comment 16: One respondent recommended that NASA rewrite the clause at 1852.245–72 to utilize DOD condition codes F, J and K in determining whether property is "economically repairable".

Response: Non-concur. The economic repair codes suggested by the contractor are Department of Defense codes not applicable to NASA. NASA utilizes its own criteria to determine whether it is economically feasible to repair items.

Comment 17: One respondent recommended revising the language at 1852.245–72(c) to make liability for Government property furnished more consistent with FAR 52.245–1(h)(i) and commercial practices.

Response: Concur. The phrase "or when sustained while the property is being worked upon and directly resulting from that work, including but not limited to, any repairing, adjusting, inspecting, servicing, or maintenance operation." is deleted from the first sentence of paragraph (c) of 1852.245–72.

Comment 18: One respondent recommended deleting paragraph (d) of 1852.245–72, regarding insurance requirements since in conflict with FAR Part 45.

Response: Concur. Paragraph (d) deleted.

Comment 19: One respondent recommended deleting the clause at 1352.245–73.

Response: Non-concur. The reporting requirements of this clause were not added or significantly altered in the proposed rule. NASA requires submission of this report to support generation of its financial statement and other Government financial management reporting requirements. Financial reporting requirements of NASA property in the custody of contractors may be revised in the future based on advances in electronic accounting and reporting systems, and public comment will be solicited.

Comment 20: One respondent recommended eliminating the UID number and Data matrix ID symbols requirements contained in the clause at 1852.245–74 for research and development contracts with higher education, non-profit organizations.

Response: Partially Concur. NASA requires identification to assure that its property is adequately managed and controlled. However, language has been added to allow performing entities to propose alternate, commercial methods of durable marking that retain the data required by the above standards. Such alternate methods may be used if approved by the NASA Industrial Property Officer.

Comment 21: One respondent recommended moving the clause at 1852.245–74 to 1852.211–XX for consistency with the FAR, and that a dollar threshold be established below which marking would not be required.

Response: Partially concur. This is a property specific requirement limited to equipment items to be delivered to the Government. While a threshold is not acceptable to NASA, material and Special Tooling are not included in this requirement, thereby eliminating many low dollar items from the requirement.

Equipment is well defined in FAR. It is not applicable to items used by the contractor unless those items are no longer required and instructions require delivery to the Government. NASA does wish to apply this to equipment produced for delivery to the Government. NASA intends that this clause will assist the administration in the identification and control of equipment items that qualify for internal management recordkeeping and controls on delivery to the agency.

Comment 22: One respondent recommended that the term "item" be substituted for the term "equipment" throughout the clause at 1852.245–74.

Response: Non-concur. The requirements in this clause are intended to apply to "equipment" as defined in FAR Part 45. The term "item" could have a much broader meaning, including such things as "parts" and "items of material" NASA does not intend to apply this requirement to materials (parts). Rather, it is intended for equipment only, hence the terminology used.

Comment 23: One respondent recommended that NASA utilize DOD's MIL STD 130 and related DOD infrastructure as the basis for its "Identifications and Markings. * * *" clause at 1852.245–74.

Response: Partially concur. NASA has modified the clause language to allow the use of commercially produced

markings when those markings otherwise comply with the data and legibility requirements of the NASA standard.

Comment 24: One respondent recommended that 1852.245–74(c) include additional, specific instructions on what needs to be marked and those instructions be included in the contract. In addition, the respondent commented that the reporting requirements would be in addition to standard FAR requirements.

Response: Non-concur. NASA intends the use of these identification requirements only on delivered or transferred equipment. Instructions in the clause are sufficient to define its applicability.

Comment 25: One respondent recommended that the phrase "For Items physically transferred" in paragraph (d) of 1852.245–74 be clarified.

Response: Partially concur. Language is changed to clarify by adding the phrase, "equipment no longer required for contract performance." in paragraphs (a) and (d).

Comment 26: One respondent recommended deleting the requirement to provide item condition at 1852.245–74(d)(2) since condition code is not required by the FAR clause at 52.245–1.

Response: Partially concur. Condition codes are discussed within the FAR Property Clause at 52.245–1(j)(3)(iv) and are normally ascertained by the contractor at the time the items are no longer required for contract performance. Clause language is changed to implement condition codes used at time of disposal.

Comment 27: One respondent recommended deleting the requirement to provide "date last serviced" at 1852.245–74(d)(3).

Response: Concur. Requirement is deleted.

Comment 28: One respondent recommended replacing the term "equipment" in paragraph (f) of 1852.245–74 with the term "an end item" to standardize terminology throughout rule.

Response: Non-concur. NASA has standardized terminology on the term "equipment".

Comment 29: One respondent recommended deleting the clause at 1852.245–75, stating "portions are repetitive of the FAR requirements."

Response: Non-concur. This clause clarifies the term "significant" in the FAR clause at 52.245–1(b)(1) to ensure NASA is notified when contractor changes may increase risk to property and contract performance.

Comment 30: One respondent recommended the single point of contact referenced in paragraph (a) of 1852.245–75 be the Property Administrator.

Response: Partially concur. While the NASA Industrial Property Officer must be advised of significant changes as defined in this clause, the Property Administrator will be the single source for direction to the contractor regarding the acceptability of proposed changes.

Comment 31: One Respondent suggested that sub paragraphs (a)(1), (2), & (3) of the proposed clause at 1852.245–75 were written too broadly in an attempt to clarify the phrase "the Contractor shall disclose any significant changes to their property management system" at FAR 52.245–1(b)(1).

Response: Non-concur. This language provides more specific descriptions of what constitutes a "significant change" to a contractor's property management system as stated in FAR 52.245–1(b). The more specific language was written to ensure that NASA is notified when contractor changes may increase risk to property and risk to contract performance.

Comment 32: One respondent recommended that since the FAR states that any "significant" changes be disclosed to the Property Administrator (PA), the single point of contact should be PA in paragraph (b) the proposed rule at 1852.245–75.

Response: Partially concur. While the NASA Industrial Property Officer must be advised of significant changes as defined in this clause, the Property Administrator will be the single source for direction to the contractor regarding the acceptability of proposed changes.

Comment 33: One respondent suggested adding language allowing the contractor to acquire property identified in their proposal in response to the provision at 1852.245–80 without further approval.

Response: Concur. Such language will be added to the clause at 1852.245–70.

Comment 34: One respondent suggested adding the dates for FAR clauses referenced in the NASA FAR supplement Clauses.

Response: Partially concur. Wherever FAR clauses are referenced in NASA FAR Supplement (NFS) clauses, the date of the FAR clause will be included at least once in the same clause, or the reference may use the language "FAR 52.245–X, as incorporated in this contract".

Comment 35: One respondent recommended deleting the clause at 1852.245–78, *Physical Inventory of Capital Personal Property,* suggesting the clause is overly prescriptive and goes beyond industry and other government standards. The respondent further suggested, that in accordance with NASA's own accounting rules, property with an acquisition value of more than $100,000 would not necessarily be considered a capital asset.

Response: Partially-concur. NASA believes the clause, and the specific annual physical inventory requirements required by the clause for high value items, are necessary to ensure the existence and completeness of inventory records associated with such items that may be included in NASA's financial statements as capital assets. The $100,000 threshold was chosen since it matches one of the base criteria used to determine an item as a capital asset. Since as the respondent suggests, contractors shouldn't and couldn't determine which items greater than $100,000 were considered NASA Capital assets, the dollar threshold alone is used as a demarcation for ease of use by the contractor. Further, ASTM Standards allow for stratified inventories, as high value items may require more visibility than low value items.

Comment 36: One respondent recommended removing the requirement at 1852.245–78(a)(2) to use inventory results to validate the "condition and use status" in property record data, since inventory personnel rarely have the skill to determine condition of property and condition is generally determined at time of disposition.

Response: Partially concur. The requirement to validate "condition" and use are removed, however, the requirement to verify the existence of the items and the completeness of the records were restated.

Comment 37: One respondent suggested that the FAR deleted the requirement for "separation of duties" (inventory to be performed by individuals other than those assigned custody, or responsibility for maintenance or posting); likewise, NASA should delete the requirement for "separation of duties" at 1852.245–78(b).

Response: Non-concur. ASTM Standards and GAO Best Practices recommend separation of duties either physically or by technologic means. This rule allows for either.

Comment 38: One respondent recommended deleting the prohibition for manual entry of data at 1852.245–78(b)(1) when an electronic property identification systems is utilized.

Response: Non-concur. Allowing manual entry of critical data would permit tampering with existence and

completeness records and would negate the "separation of duties" benefit derived from software controls.

Comment 39: One Respondent recommended deleting the condition at 1852.245–78(b)(2)(ii) since it wasn't relevant to physical inventory.

Response: Concur. Deleted.

Comment 40: One Respondent recommended deleting the requirement at 1852.245–78(b)(3) for the contractor to obtain approval for waivers from the NASA IPO, and substituting approval from the Property Administrator.

Response: Concur. Waivers will be required to be submitted to and approved by the Property Administrator. NASA will accomplish desired IPO notification and concurrence requirements through delegation instructions to the Property administrator.

Comment 41: One respondent suggested that the requirement at 1852.245–78(c) to deliver the physical inventory report within 10-calendar days of completion of the physical inventory was not sufficient time considering time needed for reconciliation.

Response: Non-concur. 10 calendar days is sufficient time. NASA considers the reconciliation process to be included as part of the physical inventory process.

Comment 42: One respondent recommended that the requirement at 1852.245–78(c) to report the results of the physical inventory to the NASA IPO be changed to the Property Administrator.

Response: Concur. Language changed.

Comment 43: One Respondent recommended standardizing the "loss, damage or destruction * * *" language at 1852.245–71(c)(2)(i) with the FAR language in 52,245–1.

Response: Concur. Language changed to "Loss, damage, destruction or theft * * *"

Comment 44: One respondent recommended changing the requirement at 1852.245–78(d) for the Contractor to retain "all physical inventory records" to "pertinent physical inventory records".

Response: Partially-concur. Language changed to require the Contractor to "retain auditable physical inventory records".

Comment 45: One respondent recommended deleting the clause at 1852.245–79, Records and Disposition Reports for Government Property with Potential Historic or Significant Real Value.

Response: Non-concur. NASA believes this clause is necessary to ensure there are complete records for high value or historic value items.

Comment 46: One respondent suggested that the first two sentences of paragraph (a) of the clause at 1852.245–79 were "commentary" in nature and should be deleted.

Response: Concur. Sentences delete.

Comment 47: One respondent recommended changing the requirement for the Contractor to obtain approval from the NASA IPO to approval from the Property Administrator at 1852.245–79(c).

Response: Concur. Approval requirement changed from NASA IPO to Property administrator.

Comment 48: One respondent suggested that the provision at 1852.245–80, Government Property Management Information, was a duplicate of requirements in FAR Part 45.

Response: Noted. This provision implements requirements in FAR Part 45 by providing specific language for NASA Contracting Officers to include in NASA Solicitations.

Comment 49: One respondent recommended deleting paragraph (e) of the provision at 1852.245–80, since contractors must otherwise comply with CAS 402 which defines direct costs.

Response: Partially-concur. NASA agrees that compliance with CAS and the contractor's disclosure statement will determine how a particular cost can be allocated. The provision only requires the contractor to disclose in the proposal any such accounting practices.

Comment 50: One respondent recommended limiting the scope of paragraph (g) of 1852.245–80 to items valued over $100,000, and eliminating the requirement for detailed information on the items.

Response: Partially-concur. Items below $100,000 will still be required to be listed; however, detail will be limited to a description of the intended end item and its estimated value.

Comment 51: One respondent recommended changing the prescription at 1852.245–81 from "insert the following provision" to "insert the following clause".

Response: Non-concur. The Prescription references a solicitation provision.

Comment 52: One respondent recommended inserting the date for the FAR clause referenced at 1852.245–81(b).

Response: Concur. Date inserted.

This is not a significant regulatory action and, therefore, is not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This final rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

NASA certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because it largely implements changes to the FAR Parts 45 and 52.245 set forth in FAC 2005–17, and does not impose an significant economic impact beyond that addressed in the FAC 2005–17 publication of the FAR final rule.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) is applicable. However, the NFS changes do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* beyond those identified and approved as part of the FAR Part 45 rewrite contained in FAC 2005–17 (Ref OMB control no. 9000–0075) and those previously approved under NASA clearances (Ref OMB control nos. 2700–0017, 2700–0088, and 2700–0089)

List of Subjects in 48 CFR Parts 1845 and 1852

Government procurement, Government property.

William P. McNally,

Assistant Administrator for Procurement.

■ Accordingly, 48 CFR parts 1845 and 1852 are amended as follows:

■ 1. The authority citation for 48 CFR parts 1845 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2455(a), 2473(c)(1).

PART 1845—GOVERNMENT PROPERTY

■ 2. Subpart 1845.1 is revised to read as follows:

Subpart 1845.1—General

1845.107 Contract clauses.

1845.107–70 NASA solicitation provisions and contract clauses.

(a)(1) The contracting officer shall insert the clause at 1852.245–70, Contractor Requests for Government-Provided Property, in cost reimbursement solicitations and contracts.

(2) Use the clause with its Alternate I when the center Supply and Equipment Management Officer (SEMO) consents to permit the contractor to screen Government inventory for available property in lieu of contractor acquisition of new items.

(b)(1) The contracting officer shall insert the clause at 1852.245–71, Installation—Accountable Government

Property, in solicitations and contracts when Government property is to be made available to a contractor working on a NASA installation, and the Government will maintain accountability for the property. The contracting officer shall list in the clause the applicable property user responsibilities. For purposes of this clause, NASA installations include local off-site buildings owned or leased by NASA.

(2) Use of this clause is subject to the SEMO's concurrence that adequate Government property management resources are available for oversight of the property in accordance with all applicable NASA installation property management directives.

(3) The contracting officer shall identify, in the contract, the nature, quantity, and acquisition cost of the property and make it available on a nocharge basis.

(4) The contracting officer shall use the clause with its Alternate I if the SEMO requests that the contractor be restricted from use of the center central receiving facility for the purposes of receiving contractor-acquired property.

(5) For contractors with both onsite and offsite performance requirements, contracting officers shall list Government property provided for offsite use separately in the contract. This Government property is furnished under FAR 52.245–1, Government Property, and remains accountable to the contractor during its use on the contract. This Government property is not subject to the clause at 1852.245–71, Installation—Accountable Government Property. The contracting officer shall address any specific maintenance considerations (*e.g.*, requiring or precluding use of an installation calibration or repair facility) elsewhere in the contract.

(c) The contracting officer shall insert the clause at 1852.245–72, Liability for e Government Property Furnished for Repair or Other Services, in fixed-price, time-and-material, and labor-hour solicitations and contracts (except for experimental, developmental, or research work with educational or nonprofit institutions, where no profit is contemplated) for repair, modification, rehabilitation, or other servicing of Government property, if such property is to be furnished to a contractor for that purpose and no other Government property is to be furnished. The contracting officer shall not require additional insurance under the clause unless the circumstances clearly indicate advantages to the Government.

(d) The contracting officer shall insert the clause at 1852.245–73, Financial Reporting of NASA Property in the Custody of Contractors, in cost reimbursement solicitations and contracts unless all property to be provided is subject to the clause at 1852.245–71, Installation—Accountable Government Property. The clause shall also be included in other types of solicitations and contracts when it is known at award that property will be provided to the contractor or that the contractor will acquire property title to which will vest in the Government prior to delivery.

(e) The contracting officer shall insert the clause at 1852.245–74, Identification and Marking of Government Property, in solicitations and contracts that—

(1) Include the clause at FAR 52.245–1; or

(2) Require the delivery of supplies.

(f) The contracting officer shall insert the clause at 1852.245–75, Property Management Changes, in solicitations and contracts that provide for progress payments or include any of the property clauses prescribed in FAR Part 45.

(g) The contracting officer shall insert the clause at 1852.245–76, List of Government Property Furnished Pursuant to FAR 52.245–1, in solicitations and contracts when the contractor is to be accountable under the contract for Government property.

(h) The contracting officer shall insert the clause at 1852.245–77, List of Government Property Furnished Pursuant to FAR 52.245–2, in solicitations and contracts containing the clause at 52.245–2, Government Property Installation Operation Services. In addition, the contracting officer shall insert the following language in the blanks in paragraph (e) of the clause at 52.245–2:

"The Government property provided under this clause is identified in clause 1852.245–77 of this contract."

(i) The contracting officer shall insert the clause at 1852.245–78, Physical Inventory of Capital Personal Property, in cost reimbursement and fixed-price solicitations and contracts that provide Government property.

(j) The contracting officer shall insert the clause at 1852.245–79, Records and Disposition Reports for Government Property with Potential Historic or Significant Real Value, in solicitations and contracts when, after consultation with the center Historic Preservation Officer, it is determined that the items acquired for or produced by the contract are likely to have historic significance or increased value due to their use in support of NASA projects and programs.

(k)(1) The contracting officer shall insert the provision at 1852.245–80, Government Property Management Information, in solicitations when it is known, or there is a reasonable chance, that Government property will be provided to the contractor for contract performance. .

(2) The contracting officer shall use the provision with Alternate 1 when there are sufficient time and resources to allow prospective contractors the opportunity to inspect the property.

(l) The contracting officer shall insert the provision at 1852.245–81, List of Available Government Property, in solicitations when Government property will be made available for contract performance.

(m) The contracting officer shall insert the clause at 1852.245–82, Occupancy Management Requirements, in solicitations and contracts that require performance on, or in, any NASA Center, Installation, facility or other NASA owned property.

(n) The contracting officer shall insert the clause at 1852.245–83 Real Property Management Requirements, in solicitations and contracts for acquisition, construction, modification (including when the modification is a consequence of another approved task, *e.g.*, installation of telephonic or local area network equipment), demolition, or management of real property.

■ 3. Subpart 1845.3 is added to read as follows:

Subpart 1845.3—Authorizing the Use and Rental of Government Property

1845.301–71 Use of Government property for commercial work.

(a) The coverage at FAR 45.3 applies to a contractor's commercial (any non-Government) use of any NASA equipment.

1845.302 Use of Government property on contracts with foreign governments or international organizations.

(a) NASA contracting officers will recover a fair share of the cost of Government property if such property is used in performing services or manufacturing articles for foreign countries or for international organizations.

Subpart 1845.4—[Removed and Reserved]

■ 4. Subpart 1845.4 is removed and reserved.

■ 5. Subpart 1845.5 is revised to read as follows:

Subpart 1845.5—Support Government Property Administration

Sec.

Subpart 1845.5—Support Government Property Administration

1845.501–70 General.

(b) When the Industrial Property Officer or Property Administrator determines that the contractor's proposed systems, standards and practices for the management of Government property are inadequate to manage Government property, the Contracting Officer should: (1) Require the contractor to provide a written revision that addresses the determination of the Industrial Property Officer or Property Administrator.

1845.503–70 Delegations of property administration and plant clearance.

(e) Under the clause at 1852.245–71, Installation-Accountable Government Property, property is managed by center logistics functions using NASA internal policy and procedural guidance, except—

(1) When contractors are provided or are allowed the use of property that is not governed by that procedural guidance, management of that property is governed by the applicable FAR clause.

(2) When the contractor is responsible for performance of any segment of a property system under a FAR property clause, then property administration and plant clearance are required.

1845.505–70 Responsibilities of the property administrator.

(c) When the property administrator determines that all or a portion of a contractor's property management practices and processes do not afford sufficient protection against loss, damage or destruction of Government property:

(1) The property administrator shall increase surveillance to prevent, to the extent possible, any loss, damage, or destruction of Government property; and

(2) Advise the contracting officer of any known or reported incidence of loss, damage or destruction identified during any period in which the contracting officer has revoked the Government's acceptance of risk.

(d) The property administrator shall review records and the results of contractor actions to identify any and all incidence where the contractor fails to report property no longer required for performance for periods longer than called for in their standards and practices.

1845.506–70 Responsibilities of the plant clearance officer.

When plant clearance is not delegated to DOD, NASA plant clearance officers shall be responsible for—

(a) Providing the contractor with instructions and advice regarding the proper preparation of inventory schedules;

(b) Accepting or rejecting inventory schedules;

(c) Conducting or arranging for inventory verification;

(d) Initiating prescribed screening and effecting resulting actions;

(e) Final plant clearance of contractor inventory;

(f) Pre-inventory scrap determinations, as appropriate;

(g) Evaluating the adequacy of the contractor's procedures for property disposal and providing feedback to the Property Administrator regarding the contractor's performance in property disposal activities;

(h) Determining the method of disposal;

(i) Surveillance of any contractor conducted sales;

(j) Accounting for all contractor inventory reported by the contractor;

(k) Advising and assisting, as appropriate, the contractor, the Supply and Equipment Management Officer (SEMO) and other Federal agencies in all actions relating to the proper and timely disposal of contractor inventory;

(l) Approving the method of sale, evaluating bids, and approving sale prices for any contractor-conducted sales; and

(m) Recommending the reasonableness of selling expenses related to any contractor-conducted sales.

Subpart 1845.6—Reporting, Reutilization, and Disposal

■ 6. Section 1845.606–70 is added to read as follows:

1845.606–70 Contractor's approved scrap procedure.

(a) When a contractor has an approved scrap procedure, certain property may be routinely disposed of in accordance with that procedure and not processed under this section.

(d) Property in scrap condition, other than that disposed of through the contractor's approved scrap procedure, shall be reported on appropriate inventory schedules for disposition in accordance with the provisions of FAR Part 45 and NFS 1845.

Subpart 1845.7101—Forms Preparation

■ 7. Paragraph (c) of section 1845.7101–2 is revised to read as follows:

1845.7101–2 Transfer of property.

* * * * *

(c) *Incomplete documentation.* If contractors receive transfer documents having insufficient detail to properly record the transfer (*e.g.*, omission of property classification, FSC, unit acquisition cost, Government acquisition date, required signatures, *etc.*) they shall request the omitted data directly from the shipping contractor or through the property administrator. The contracting officer shall assist the Government Property Administrator and the receiving contractor to obtain all required information for the receiving contractor to establish adequate property records.

* * * * *

1845.7102 [Removed]

■ 8. Section 1845.7102 is removed.

Subpart 1845.72—[Removed]

■ 9. Subpart 1845.72 is removed.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 10. In Part 1852, sections 1852.245–70 through 1852.245–80 are revised and sections 1852.245–81 through 1852.245–83 are added to read as follows:

Subpart 1852.2—Text of Provisions and Clauses

* * * * *

Sec.

* * * * *

Subpart 1852.2—Text of Provisions and Clauses

* * * * *

1852.245–70 Contractor Requests for Government-Provided Equipment.

As prescribed in 1845.107–70(a)(1), insert the following clause:

CONTRACTOR REQUESTS FOR GOVERNMENT-PROVIDED EQUIPMENT (JAN 2011)

(a) The Contractor shall provide all property required for the performance of this contract. The Contractor shall not acquire or construct items of property to which the Government will have title under the provisions of this contract without the Contracting Officer's written authorization. Property which will be acquired as a deliverable end item as material or as a component for incorporation into a deliverable end item is exempt from this requirement. Property approved as part of the contract award or specifically required within the statement of work is exempt from this requirement.

(b)(1) In the event the Contractor is unable to provide the property necessary for performance, and the Contractor requests provision of property by the Government, the Contractor's request shall—

(i) Justify the need for the property;

(ii) Provide the reasons why contractor-owned property cannot be used;

(iii) Describe the property in sufficient detail to enable the Government to screen its inventories for available property or to otherwise acquire property, including applicable manufacturer, model, part, catalog, National Stock Number or other pertinent identifiers;

(iv) Combine requests for quantities of items with identical descriptions and estimated values when the estimated values do not exceed $100,000 per unit; and

(v) Include only a single unit when the acquisition or construction value equals or exceeds $100,000.

(2) Contracting Officer authorization is required for items the Contractor intends to manufacture as well as those it intends to purchase.

(3) The Contractor shall submit requests to the Contracting Officer no less than 30 days in advance of the date the Contractor would, should it receive authorization, acquire or begin fabrication of the item.

(c) The Contractor shall maintain copies of Contracting Officer authorizations, appropriately cross-referenced to the individual property record, within its property management system.

(d) Property furnished from Government excess sources is provided as-is, where-is. The Government makes no warranty regarding its applicability for performance of the contract or its ability to operate. Failure of property obtained from Government excess sources under this clause is insufficient reason for submission of requests for equitable adjustments discussed in the clause at FAR 52.245–1, Government Property, as incorporated in this contract.

(End of Clause)

ALTERNATE I (JAN 2011)

As prescribed in 1845.107–70(a)(2), add the following paragraph (e).

(e) In the event the Contracting Officer issues written authorization to provide property, the Contractor shall screen Government sources to determine the availability of property from Government inventory or excess property.

(1) The Contractor shall review NASA inventories and other authorized Federal excess sources for availability of items that meet the performance requirements of the requested property.

(i) If the Contractor determines that a suitable item is available from NASA supply inventory, it shall request the item using applicable Center procedures.

(ii) If the Contractor determines that an item within NASA or Federal excess is suitable, it shall contact the Center Industrial Property Officer to arrange for transfer of the item from the identified source to the Contractor.

(2) If the Contractor determines that the required property is not available from inventory or excess sources, the Contractor shall note the acquisition file with a list of sources reviewed and the findings regarding the lack of availability. If the required property is available, but unsuitable for use, the contractor shall document the rationale for rejection of available property. The Contractor shall retain appropriate cross-referenced documentary evidence of the outcome of those screening efforts as part of its property records system.

1852.245–71 Installation-accountable Government Property.

As prescribed in 1845.107–70(b)(1), insert the following clause:

INSTALLATION-ACCOUNTABLE GOVERNMENT PROPERTY (JAN 2011)

(a) The Government property described in paragraph (c) of this clause may be made available to the Contractor on a no-charge basis for use in performance of this contract. This property shall be utilized only within the physical confines of the NASA installation that provided the property unless authorized by the Contracting Officer under (b)(1)(iv). Under this clause, the Government retains accountability for, and title to, the property, and the Contractor shall comply with the following:

NASA Procedural Requirements (NPR) 4100.1, NASA Materials Inventory Management Manual;

NASA Procedural Requirements (NPR) 4200.1, NASA Equipment Management Procedural Requirements;

NASA Procedural Requirement (NPR) 4300.1, NASA Personal Property Disposal Procedural Requirements;

[Insert any additional property management responsibilities.].

Property not recorded in NASA property systems must be managed in accordance with the requirements of the clause at FAR 52.245–1, as incorporated in this contract.

The Contractor shall establish and adhere to a system of written procedures to assure continued, effective management control and compliance with these user responsibilities. In accordance with FAR 52.245–1(h)(1) the contractor shall be liable for property lost, damaged, destroyed or stolen by the contractor or their employees when determined responsible by a NASA Property Survey Board, in accordance with the NASA guidance in this clause.

(b)(1) The official accountable recordkeeping, financial control, and reporting of the property subject to this clause shall be retained by the Government and accomplished within NASA management information systems prescribed by the installation Supply and Equipment Management Officer (SEMO) and Financial Management Officer. If this contract provides for the Contractor to acquire property, title to which will vest in the Government, the following additional procedures apply:

(i) The Contractor's purchase order shall require the vendor to deliver the property to the installation central receiving area.

(ii) The Contractor shall furnish a copy of each purchase order, prior to delivery by the vendor, to the installation central receiving area.

(iii) The Contractor shall establish a record for Government titled property as required by FAR 52.245–1, as incorporated in this contract, and shall maintain that record until accountability is accepted by the Government.

(iv) Contractor use of Government property at an off-site location and off-site subcontractor use requires advance approval of the Contracting Officer and notification of the Industrial Property Officer. The property shall be considered Government furnished and the Contractor shall assume accountability and financial reporting responsibility. The Contractor shall establish records and property control procedures and maintain the property in accordance with the requirements of FAR 52.245–1, Government Property (as incorporated in this contract), until its return to the installation. NASA Procedural Requirements related to property loans shall not apply to offsite use of property by contractors.

(2) After transfer of accountability to the Government, the Contractor shall continue to maintain such internal records as are necessary to execute the user responsibilities identified in paragraph (a) of this clause and document the acquisition, billing, and disposition of the property. These records and supporting documentation shall be made available, upon request, to the SEMO and any other authorized representatives of the Contracting Officer.

(c) The following property and services are provided if checked:

(1) Office space, work area space, and utilities. Government telephones are available for official purposes only.

(2) Office furniture.

(3) Property listed in [Insert attachment number or "not applicable" if no equipment is provided].

(i) If the Contractor acquires property, title to which vests in the Government pursuant to other provisions of this contract, this property also shall become accountable to the Government upon its entry into Government records.

(ii) The Contractor shall not bring to the installation for use under this contract any property owned or leased by the Contractor, or other property that the Contractor is accountable for under any other Government contract, without the Contracting Officer's prior written approval.

(4) Supplies from stores stock.

(5) Publications and blank forms stocked by the installation.

(6) Safety and fire protection for Contractor personnel and facilities.

(7) Installation service facilities: [Insert the name of the facilities or "none"].

(8) Medical treatment of a first-aid nature for Contractor personnel injuries or illnesses sustained during on-site duty.

(9) Cafeteria privileges for Contractor employees during normal operating hours.

(10) Building maintenance for facilities occupied by Contractor personnel.

(11) Moving and hauling for office moves, movement of large equipment, and delivery of supplies. Moving services may be provided on-site, as approved by the Contracting Officer.

(End of clause)

ALTERNATE I (JAN 2011)

As prescribed in 1845.107–70(b)(4), substitute the following for paragraph (b)(1)(i) of the basic clause:

(i) The Contractor shall not utilize the installation's central receiving facility for receipt of contractor-acquired property. However, the Contractor shall provide listings suitable for establishing accountable records of all such property received, on a monthly basis, to the SEMO.

1852.245–72 Liability for Government Property Furnished for Repair or Other Services.

As prescribed in 1845.107–70(c), insert the following clause:

LIABILITY FOR GOVERNMENT PROPERTY FURNISHED FOR REPAIR OR OTHER SERVICES (JAN 2011)

(a) This clause shall govern with respect to any Government property furnished to the Contractor for repair or other services that is to be returned to the Government. Such property, hereinafter referred to as "Government property furnished for servicing," shall not be subject to FAR 52.245–1, Government Property.

(b) The official accountable recordkeeping and financial control and reporting of the property subject to this clause shall be retained by the Government. The Contractor shall maintain adequate records and procedures to ensure that the Government property furnished for servicing can be readily accounted for and identified at all times while in its custody or possession or in the custody or possession of any subcontractor.

(c) The Contractor shall be liable for any loss, damage, or destruction of the Government property furnished for servicing when caused by the Contractor's failure to exercise such care and diligence as a reasonable prudent owner of similar property would exercise under similar circumstances. The Contractor shall not be liable for loss, damage, or destruction of Government property furnished for servicing resulting from any other cause except to the extent that the loss, damage, or destruction is covered by insurance (including self-insurance funds or reserves).

(d) The Contractor shall hold the Government harmless and shall indemnify the Government against all claims for injury to persons or damage to property of the Contractor or others arising from the Contractor's possession or use of the Government property furnished for servicing or arising from the presence of that property on the Contractor's premises or property.

(End of clause)

1852.245–73 Financial Reporting of NASA Property in the Custody of Contractors.

■ As prescribed in 1845.106–70(d), insert the following clause:

FINANCIAL REPORTING OF NASA PROPERTY IN THE CUSTODY OF CONTRACTORS (JAN 2011)

(a) The Contractor shall submit annually a NASA Form (NF) 1018, NASA Property in the Custody of Contractors, in accordance with this clause, the instructions on the form and NFS subpart 1845.71, and any supplemental instructions for the current reporting period issued by NASA.

(b)(1) Subcontractor use of NF 1018 is not required by this clause; however, the Contractor shall include data on property in the possession of subcontractors in the annual NF 1018.

(2) The Contractor shall mail the original signed NF 1018 directly to the cognizant NASA Center Deputy Chief Financial Officer, Finance, unless the Contractor uses the NF 1018 Electronic Submission System (NESS) for report preparation and submission.

(3) One copy shall be submitted (through the Department of Defense (DOD) Property Administrator if contract administration has been delegated to DOD) to the following address: [Insert name and address of appropriate NASA Center office.], unless the Contractor uses the NF 1018 Electronic Submission System (NESS) for report preparation and submission.

(c)(1) The annual reporting period shall be from October 1 of each year through September 30 of the following year. The report shall be submitted in time to be received by October 15. The information contained in these reports is entered into the NASA accounting system to reflect current asset values for agency financial statement purposes. Therefore, it is essential that required reports be received no later than October 15. Some activity may be estimated for the month of September, if necessary, to ensure the NF 1018 is received when due. However, contractors' procedures must document the process for developing these estimates based on planned activity such as planned purchases or NASA Form 533 (NF 533 Contractor Financial Management Report) cost estimates. It should be supported and documented by historical experience or other corroborating evidence, and be retained in accordance with FAR Subpart 4.7, Contractor Records Retention. Contractors shall validate the reasonableness of the estimates and associated methodology by comparing them to the actual activity once that data is available, and adjust them accordingly. In addition, differences between the estimated cost and actual cost must be adjusted during the next reporting period. Contractors shall have formal policies and procedures, which address the validation of NF 1018 data, including data from subcontractors, and the identification and timely reporting of errors. The objective of this validation is to ensure that information reported is accurate and in compliance with the NASA FAR Supplement. If errors are discovered on NF 1018 after submission, the contractor shall contact the cognizant NASA Center Industrial Property Officer (IPO) within 30 days after discovery of the error to discuss corrective action.

(2) The Contracting Officer may, in NASA's interest, withhold payment until a reserve not exceeding $25,000 or 5 percent of the amount of the contract, whichever is less, has been set aside, if the Contractor fails to submit annual NF 1018 reports in accordance with NFS subpart 1845.71 and any supplemental instructions for the current reporting period issued by NASA. Such reserve shall be withheld until the Contracting Officer has determined that NASA has received the required reports. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government right.

(d) A final report shall be submitted within 30 days after disposition of all property subject to reporting when the contract performance period is complete in accordance with paragraph (b)(1) through (3) of this clause.

(End of clause)

1852.245–74 Identification and Marking of Government Equipment.

■ As prescribed by 1845.107–70(e), insert the following clause.

IDENTIFICATION AND MARKING OF GOVERNMENT EQUIPMENT (JAN 2011)

(a) The Contractor shall identify all equipment to be delivered to the Government using NASA Technical Handbook (NASA–HDBK) 6003, Application of Data Matrix Identification Symbols to Aerospace Parts Using Direct Part Marking Methods/Techniques, and NASA Standard (NASA–STD) 6002, Applying Data Matrix Identification Symbols on Aerospace Parts or through the use of commercial marking techniques that: (1) are sufficiently durable to remain intact through the typical lifespan of the property: and, (2) contain the data and data format required by the standards. This requirement includes deliverable equipment listed in the schedule and other equipment when no longer required for contract performance and NASA directs physical transfer to NASA or a third party. The Contractor shall identify property in both machine and human readable form unless the use of a machine readable-only format is approved by the NASA Industrial Property Officer.

(b) Equipment shall be marked in a location that will be human readable, without disassembly or movement of the equipment, when the items are placed in service unless such placement would have a deleterious effect on safety or on the item's operation.

(c) Concurrent with equipment delivery or transfer, the Contractor shall provide the following data in an electronic spreadsheet format:

(1) Item Description.

(2) Unique Identification Number (License Tag).

(3) Unit Price.

(4) An explanation of the data used to make the unique identification number.

(d) For equipment no longer needed for contract performance and physically transferred under paragraph (a) of this clause, the following additional data is required:

(1) Date originally placed in service.

(2) Item condition.

(e) The data required in paragraphs (c) and (d) of this clause shall be delivered to the NASA center receiving activity listed below:

_____

_____

_____

(f) The contractor shall include the substance of this clause, including this paragraph (f), in all subcontracts that require delivery of equipment.

(End of clause)

1852.245–75 Property Management Changes.

■ As prescribed in 1845.107–70(f), insert the following clause.

PROPERTY MANAGEMENT CHANGES (JAN 2011)

(a) The Contractor shall submit any changes to standards and practices used for management and control of Government property under this contract to the assigned property administrator prior to making the change whenever the change—

(1) Employs a standard that allows increase in thresholds or changes the timing for reporting loss, damage, or destruction of property;

(2) Alters physical inventory timing or procedures;

(3) Alters recordkeeping practices;

(4) Alters practices for recording the transport or delivery of Government property; or

(5) Alters practices for disposition of Government property.

(End of clause)

1852.245–76 List of Government Property Furnished Pursuant to FAR 52.245–1.

■ As prescribed in 1845.107–70(g), insert the following clause:

LIST OF GOVERNMENT PROPERTY FURNISHED PURSUANT TO FAR 52.245–1 (JAN 2011)

For performance of work under this contract, the Government will make available Government property identified below or in Attachment [Insert attachment number or "not applicable"] of this contract on a no charge-for-use basis pursuant to the clause at FAR 52.245–1, Government Property, as incorporated in this contract. The Contractor shall use this property in the performance of this contract at [Insert applicable site(s) where property will be used] and at other location(s) as may be approved by the Contracting Officer. Under FAR 52.245–1, the Contractor is accountable for the identified property.

(End of clause)

1852.245–77 List of Government Property Furnished Pursuant to FAR 52.245–2.

■ As prescribed in 1845.107–70(h), insert the following clause:

LIST OF GOVERNMENT PROPERTY FURNISHED PURSUANT TO FAR 52.245–2 (JAN 2011)

For performance of work under this contract, the Government will make available Government property identified below or in Attachment __ [Insert attachment number or "not applicable"] of this contract on a nocharge-for-use basis pursuant to FAR 52.245–2, Government Property Installation Operation Services, as incorporated in this contract. The Contractor shall use this property in the performance of this contract at __ [Insert applicable site(s) where property will be used] and at other location(s) as may be approved by the Contracting Officer.

[Insert a description of the item(s), acquisition date, quantity, acquisition cost, and applicable equipment information]

(End of clause)

1852.245–78 Physical Inventory of Capital Personal Property.

■ As prescribed in 1845.107–70(i), insert the following clause.

PHYSICAL INVENTORY OF CAPITAL PERSONAL PROPERTY (JAN 2011)

(a) In addition to physical inventory requirements under the clause at FAR 52.245–1, Government Property, as incorporated in this contract, the Contractor shall conduct annual physical inventories for individual property items with an acquisition cost exceeding $100,000.

(1) The Contractor shall inventory—

(i) Items of property furnished by the Government;

(ii) Items acquired by the Contractor and titled to the Government under the clause at FAR 52.245–1;

(iii) Items constructed by the Contractor and not included in the deliverable, but titled to the Government under the clause at FAR 52.245–1; and

(iv) Complete but undelivered deliverables.

(2) The Contractor shall use the physical inventory results to validate the property record data, specifically location and use status, and to prepare summary reports of inventory as described in paragraph (c) of this clause.

(b) Unless specifically authorized in writing by the Property Administrator, the inventory shall be performed and posted by individuals other than those assigned custody of the items, responsibility for maintenance, or responsibility for posting to the property record. The Contractor may request a waiver from this separation of duties requirement from the Property Administrator, when all of the conditions in either (1) or (2) of this paragraph are met.

(1) The Contractor utilizes an electronic system for property identification, such as a laser bar-code reader or radio frequency identification reader, and

(i) The programs or software preclude manual data entry of inventory identification data by the individual performing the inventory; and

(ii) The inventory and property management systems contain sufficient management controls to prevent tampering and assure proper posting of collected inventory data.

(2) The Contractor has limited quantities of property, limited personnel, or limited property systems; and the Contractor provides written confirmation that the Government property exists in the recorded condition and location;

(3) The Contractor shall submit the request to the cognizant property administrator and obtain approval from the property administrator prior to implementation of the practice.

(c) The Contractor shall report the results of the physical inventory to the property administrator within 10 calendar days of completion of the physical inventory. The report shall—

(1) Provide a summary showing number and value of items inventoried; and

(2) Include additional supporting reports of—

(i) Loss in accordance with the clause at 52.245–1, Government Property;

(ii) Idle property available for reuse or disposition; and

(iii) A summary of adjustments made to location, condition, status, or user as a result of the physical inventory reconciliation.

(d) The Contractor shall retain auditable physical inventory records, including records supporting transactions associated with inventory reconciliation. All records shall be subject to Government review and/or audit.

(End of clause)

1852.245–79 Records and Disposition Reports for Government Property with Potential Historic or Significant Real Value.

■ As prescribed in 1845.107–70(j), insert the following clause.

RECORDS AND DISPOSITION REPORTS FOR GOVERNMENT PROPERTY WITH POTENTIAL HISTORIC OR SIGNIFICANT REAL VALUE (JAN 2011)

(a) In addition to the property record data required by the clause at FAR 52.245–1, Government Property as incorporated in this contract, Contractor records of all Government property under this contract shall—

(1) Identify the projects or missions that used the items;

(2) Specifically identify items of flown property;

(3) When known, associate individual items of property used in space flight operations with the using astronaut(s); and

(4) Identify property used in test activity and, when known, the individuals who 0conducted the test.

(b) The Contractor shall include this information within item descriptions—

(1) On any Standard Form 1428, Inventory Schedule;

(2) In automated disposition systems;

(3) In any other disposition related reports; and

(4) In other requests for disposition instructions.

(c) The Contractor shall not remove NASA identification or markings from Government property prior to or during disposition without the advanced written approval of the Plant Clearance Officer.

(End of clause)

1852.245–80 Government Property Management Information.

■ As prescribed in 1845.107–70(k)(1), insert the following provision.

GOVERNMENT PROPERTY MANAGEMENT INFORMATION (JAN 2011)

(a) The offeror shall identify the industry leading or voluntary consensus standards, and/or the industry leading practices, that it intends to employ for the management of Government property under any contract awarded from this solicitation.

(b) The offeror shall provide the date of its last Government property control system analysis along with its overall status, a summary of findings and recommendations, the status of any recommended corrective actions, the name of the Government activity that performed the analysis, and the latest available contact information for that activity.

(c) The offeror shall identify any property it intends to use in performance of this contract from the list of available Government property in the provision at 1852.245–81, List of Available Government Property.

(d) The offeror shall identify all Government property in its possession, provided under other Government contracts that it intends to use in the performance of this contract. The offeror shall also identify: The contract that provided the property, the responsible Contracting Officer, the dates during which the property will be available for use (including the first, last, and all intervening months), and, for any property that will be used concurrently in performing two or more contracts, the amounts of the respective uses in sufficient detail to support prorating the rent, the amount of rent that would otherwise be charged in accordance with FAR 52.245–9, Use and Charges (June 2007), and the contact information for the responsible Government Contracting Officer. The offeror shall provide proof that such use was authorized by the responsible Contracting Officer.

(e) The offeror shall disclose cost accounting practices that allow for direct charging of commercially available equipment, when commercially available equipment is to be used in performance of the contract and the equipment is not a deliverable.

(f) The offeror shall identify, in list form, any equipment that it intends to acquire and directly charge to the Government under this contract. The list shall include a description, manufacturer, model number (when available), quantity required, and estimated unit cost. Equipment approved as part of the award need not be requested under NFS clause 1852.245–70,

(g) The offeror shall disclose its intention to acquire any parts, supplies, materials or equipment, to fabricate an item of equipment for use under any contract resulting from this solicitation when that item of equipment:

Will be titled to the government under the provisions of the contract; is not included as a contract deliverable; and the Contractor intends to charge the costs of materials directly to the contract. The disclosure shall identify the end item or system and shall include all descriptive information, identification numbers (when available), quantities required and estimated costs.

(h) Existing Government property may be reviewed at the following locations, dates, and times: [Enter the appropriate information]

(End of provision)

ALTERNATE 1 (JAN 2011)

As prescribed in 1845.107–70(k)(2) add the following paragraph (i).

(i) Existing available Government property listed in the provision at 1852.245–81 is provided "as-is." NASA makes no warranty regarding its performance or condition. The offeror uses this property at its own risk and should make its own assessment of the property's suitability for use. The equitable adjustment provisions of the clause at 52.245–1, Government Property as included in this solicitation, are not applicable to this property. The offeror must obtain the Contracting Officer's written approval before acquiring replacement property when it intends to charge the cost directly to the contract.

18.52.245–81 List of Available Government Property.

■ As prescribed in 1845.107–70(l), insert the following provision.

LIST OF AVAILABLE GOVERNMENT PROPERTY (JAN 2011)

(a) The Government will make the following Government property available for use in performance of the contract resulting from this solicitation, on a no-charge-for-use basis in accordance with FAR 52.245–1, Government Property, included in this solicitation. The offeror shall notify the Government, as part of its proposal, of its intention to use or not use the property.

(b) The Government will make the following Government property available for use in performance of the contract resulting from this solicitation, on a no-charge-for-use basis in accordance with FAR 52.245–2, Government Property Installation Operation Services, as included in this solicitation. The offeror shall notify the Government of its intention to use or not use the property.

(c) The selected Contractor will be responsible for costs associated with transportation, and installation of the property listed in this provision.

(End of provision)

1852.245–82 Occupancy Management Requirements.

■ As prescribed in 1845.106–70(m), insert the following clause:

OCCUPANY MANAGEMENT REQUIREMENTS (JAN 2011)

(a) In addition to the requirements of the clause at FAR 52.245–1, Government Property, as included in this contract, the Contractor shall comply with the following in performance of work in and around Government real property:

(1) NPD 8800.14, Policy for Real Property Management.

(2) NPR 8831.2, Facility Maintenance Management.

[Insert any additional Center occupancy requirements here]

(b) The Contractor shall obtain the written approval of the Contracting Officer before installing or removing Contractor-owned property onto or into any Government real property or when movement of Contractor-owned property may damage or destroy Government-owned property. The Contractor shall restore damaged property to its original condition at the Contractor's expense.

(c) The Contractor shall not acquire, construct or install any fixed improvement or structural alterations in Government buildings or other real property without the advance, written approval of the Contracting Officer. Fixed improvement or structural alterations, as used herein, means any alteration or improvement in the nature of the building or other real property that, after completion, cannot be removed without substantial loss of value or damage to the premises. Title to such property shall vest in the Government.

(d) The Contractor shall report any real property or any portion thereof when it is no longer required for performance under the contract, as directed by the Contracting Officer.

(End of clause)

1852.245–83 Real Property Management Requirements.

■ As prescribed in 1845.106–70(n), insert the following clause:

REAL PROPERTY MANAGEMENT REQUIREMENTS (JAN 2011)

(a) In addition to the requirements of the FAR Government Property Clause incorporated in this contract (FAR 52.245–1), the Contractor shall comply with the following in performance of any maintenance, construction, modification, demolition, or management activities of any Government real property:

(1) NPD 8800.14, Policy for Real Property Management.

(2) NPR 8831.2, Facility Maintenance Management.

[Insert any real property related Center requirements here]

(b) Within 30 calendar days following award, the Contractor shall provide a plan for maintenance of Government real property provided for use under this contract. The Contractor's maintenance program shall enable the identification, disclosure, and performance of normal and routine preventative maintenance and repair. The Contractor shall disclose and report to the Contracting Officer the need for replacement and/or capital rehabilitation. Upon acceptance by the Contracting Officer, the program shall become a requirement under this contract.

(c) Title to parts replaced by the Contractor in carrying out its normal maintenance obligations shall pass to and vest in the Government upon completion of their installation in the facilities. The Contractor shall keep the property free and clear of all liens and encumbrances.

(d) The Contractor shall keep records of all work done to real property, including plans, drawings, charts, warranties, and manuals. Records shall be complete and current. Record of all transactions shall be auditable. The Government shall have access to these records at all reasonable times, for the purposes of reviewing, inspecting, and evaluating the Contractor's real property management effectiveness. When real property is disposed of under this contract, the Contractor shall deliver the related records to the Government.

(e) The Contracting Officer may direct the Contractor in writing to reduce the work required by the maintenance program authorized in paragraph (b) of this clause at any time.

(End of clause)

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 070514119–0452–03]

RIN 0648–AV51

High Seas Driftnet Fishing Moratorium Protection Act; Identification and Certification Procedures To Address Illegal, Unreported, and Unregulated Fishing Activities and Bycatch of Protected Living Marine Resources

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

ACTION: Final rule.

SUMMARY: This final action implements identification and certification procedures to address illegal, unreported, and unregulated (IUU) fishing activities and bycatch of protected living marine resources (PLMRs) pursuant to the High Seas Driftnet Fishing Moratorium Protection Act (Moratorium Protection Act). The objectives of these procedures are to promote the sustainability of transboundary and shared fishery stocks and to enhance the conservation and recovery of PLMRs. The final rule is intended to implement existing U.S. statutory authorities to address noncompliance with international fisheries management and conservation agreements, and encourage the use of bycatch reduction methods in international fisheries that are comparable to methods used in U.S. fisheries. Agency actions and recommendations under this rule will be in accordance with U.S. obligations under applicable international trade law, including the World Trade Organization (WTO) Agreement.

DATES: This final rule is effective on January 12, 2011, except for §§ 302.205(b)(2), 300.206, and 300.207, which contain information collection requirements that have not yet been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). A document will be published in the **Federal Register** announcing the effective dates of these provisions after OMB provides its approval.

FOR FURTHER INFORMATION CONTACT: Laura Cimo, Trade and Marine Stewardship Division, Office of International Affairs, NMFS, at (301) 713–9090.

SUPPLEMENTARY INFORMATION:

Background

The Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (MSRA), which was signed into law in January 2007, amends the Moratorium Protection Act to require that actions be taken by the United States to strengthen international fishery management organizations and address IUU fishing and bycatch of PLMRs. IUU fishing has been defined in the Moratorium Protection Act and implemented through regulation at 50 CFR 300.201 as follows:

1. Fishing activities that violate conservation and management measures required under an international fishery management agreement to which the United States is a party, including catch limits or quotas, capacity restrictions, and bycatch reduction requirements;

2. Overfishing of fish stocks shared by the United States, for which there are no applicable international conservation or management measures or in areas with no applicable international fishery management organization or agreement, that has adverse impacts on such stocks; and

3. Fishing activity that has an adverse impact on seamounts, hydrothermal vents, and cold water corals located beyond national jurisdiction, for which there are no applicable conservation or management measures or in areas with no applicable international fishery management organization or agreement.

This final action amends the regulatory definition at § 300.201 to make the definition more consistent with the United Nations General Assembly Resolution 65–105.

The Moratorium Protection Act requires the Secretary of Commerce to identify in a biennial report to Congress those foreign nations whose fishing vessels are engaged in IUU fishing or fishing activities or practices that result in bycatch of PLMRs. The Moratorium Protection Act also requires the establishment of procedures to certify whether appropriate corrective actions have been taken to address IUU fishing or bycatch of PLMRs by fishing vessels of those nations. Identified nations that are not positively certified by the Secretary of Commerce could be subject to prohibitions on the importation of certain fisheries products into the United States and other measures, including limitations on port access, under the High Seas Driftnet Fisheries Enforcement Act (Enforcement Act) (16 U.S.C. 1826a). This final rule sets forth procedures to implement the identification and certification requirements of the Moratorium Protection Act.

NMFS published an Advance Notice of Proposed Rulemaking (ANPR) on June 11, 2007 (72 FR 32052), to announce that it was developing certification procedures to address IUU fishing and bycatch of PLMRs pursuant to the Moratorium Protection Act and, based upon comments received, a proposed rule was published on January 14, 2009 (74 FR 2019). Public comments were solicited on the proposed rule for a period of 120 days. In conjunction with publication of the proposed rule, NMFS held public hearings in 2009 in locations where it expected substantial public interest in the proposed procedures. These sessions were held in Boston, MA (March 16, 2009); Silver Spring, MD (April 6, 2009); San Diego, CA (April 13, 2009); Seattle, WA (April 14, 2009); Honolulu, HI (April 27, 2009);

and Miami, FL (May 12, 2009). The public hearings provided valuable opportunities for NMFS to explain the proposed rule, respond to questions, and receive feedback from the public. A summary of the comments received on the proposed rule and how these comments were addressed in the final rule can be found below. Further background is provided in the above-referenced **Federal Register** documents and is not repeated here.

NMFS prepared a final Environmental Assessment (EA) to accompany this final rule. The EA was developed as an integrated document that includes a Regulatory Impact Review (RIR) and a Final Regulatory Flexibility Analysis (FRFA). Copies of the draft EA/RIR/FRFA analysis are available at the following address: Office of International Affairs, F/IA, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. Copies are also available via the Internet at the NMFS Web site at *http://www.nmfs.noaa.gov/msa2007/*.

Major Aspects of the Final Action

This final action sets forth procedures for both the identification and certification of foreign nations whose fishing vessels are engaged in IUU fishing or bycatch of PLMRs. As discussed above, the Moratorium Protection Act requires that NMFS identify foreign nations whose fishing vessels are engaged in IUU fishing or bycatch of PLMRs and list these nations in a biennial report to Congress, the first of which was due in January 2009. The Act does not require publication of identification procedures in a rule, but in the interest of transparency and to provide context for subsequent certification determinations, NMFS decided to address identification in this action. NMFS made its first identifications in the January 2009 Biennial Report to Congress based on authority provided in the Moratorium Protection Act only, as these regulations were not yet in place.

Procedures To Identify Nations Engaged in IUU Fishing

As required under the Moratorium Protection Act, NMFS will identify, and list in the biennial report to Congress, that those nations whose fishing vessels are engaged, or have been engaged at any point during the preceding 2 years, in IUU fishing.

When determining whether to identify a nation as having fishing vessels engaged in IUU fishing, NMFS will exercise due diligence in evaluating appropriate information and evidence available to the agency. This information could include data, gathered by the U.S. Government as well as offered by other nations, international organizations (such as regional fisheries management organizations (RFMOs)), institutions, or arrangements that, if true, could support a determination that a nation's vessels have been engaged in IUU fishing. NMFS will review and verify the pertinent information when determining, for the purposes of identification, whether a nation's fishing vessels are engaged, or have been engaged, during the preceding 2 years in IUU fishing as defined under the Moratorium Protection Act.

Once NMFS has determined that the information received is credible and provides a reasonable basis to believe or suspect that a nation's fishing vessels are engaged in IUU fishing, NMFS, acting through or in consultation with the State Department, will initiate bilateral discussions with the nation to:

- Seek corroboration of the alleged IUU activity or credible information that refutes such allegations;
- Communicate the requirements of the Moratorium Protection Act to the nation; and
- Encourage such nation to take action to address the alleged IUU fishing activity in question.

Prior to making identifications, NMFS will consider measures taken by the nation to address the IUU fishing activity of its vessels, information refuting allegations of IUU fishing activity, and domestic laws or regulatory programs designed to address IUU fishing activity, along with all verified information on alleged IUU fishing activity.

In determining whether to make an IUU fishing identification, NMFS will consider whether a nation has implemented and is enforcing measures that are deemed comparable in effectiveness to measures implemented by the United States to address the pertinent IUU fishing activity. NMFS will also consider if an international fishery management organization exists with a mandate to regulate the fishery in which the IUU activity in question takes place, whether or not the nation is party to or maintains cooperating status with the organization, and whether or not the relevant RFMO has adopted measures that are deemed by NMFS to be effective at addressing such IUU fishing activity. If the nation is a party or cooperating non-party to the relevant RFMO, NMFS will consider whether the nation has implemented and is enforcing measures of that organization.

Measures by nations to address IUU fishing could include those that reflect the recommendations of international organizations to prevent, deter and eliminate IUU fishing. Such flag State measures and actions, as relevant, may include, but are not limited to, those that fall into the following categories:

- Data collection and catch reporting programs, including observer programs, catch documentation programs, and trade tracking schemes;
- Trade-related measures that seek to reduce or eliminate trade in fish, and fish products derived from IUU fishing;
- At-sea or dockside boarding and inspection schemes;
- Programs documenting whether fish were caught in a manner consistent with conservation and management measures;
- IUU vessel lists identifying fishing vessels that violate and/or undermine conservation and management measures;
- Port State measures to prohibit landings or transshipment of unauthorized or other IUU catch;
- Catch and effort monitoring, including licensing and permitting schemes, reporting, and vessel monitoring systems (VMS);
- Bycatch reduction and mitigation strategies and techniques, such as gear restrictions or requirements, if the IUU fishing activity includes a violation of bycatch reduction or mitigation conservation and management measures;
- Programs or measures to identify and protect vulnerable marine ecosystems (VMEs) in waters beyond any national jurisdiction (including seamounts, hydrothermal vents, and cold water corals) from significant adverse impacts due to bottom fishing activities;
- Efforts to improve and enhance fisheries enforcement and compliance, including through the development of effective sanctions and monitoring, control and surveillance (MCS) capacity; and
- Participation in voluntary international efforts to combat IUU fishing (*e.g.*, the International Monitoring, Control, and Surveillance (MCS) Network or other cooperative enforcement and compliance networks).

NMFS will also examine whether adequate enforcement measures and capacity exist to help promote compliance.

Notification of and Consultations With Nations Identified as Having Fishing Vessels Engaged in IUU Fishing

Upon identifying a nation whose vessels have been engaged in IUU fishing activities in the biennial report to Congress, the Secretary of Commerce

will notify the President of such identification. Within 60 days after submission of the biennial report to Congress, the Secretary of Commerce, acting through or in consultation with the Secretary of State, will notify:

1. Nations that have been identified in the biennial report as having fishing vessels that are currently engaged, or were engaged at any point during the preceding 2 calendar years, in IUU fishing activities;

2. Identified nations of the requirements under the Moratorium Protection Act and this subpart; and

3. Any relevant international fishery management organization of actions taken by the United States to identify nations whose fishing vessels are engaged in IUU fishing.

Within 60 days after submission of the biennial report to Congress, the Secretary of Commerce, acting through or in consultation with the Secretary of State, will initiate consultations with nations that have been identified in the biennial report as having fishing vessels that are currently engaged, or were engaged at any point during the preceding 2 calendar years, in IUU fishing activities for the purpose of encouraging such nations to take appropriate corrective action with respect to the IUU fishing activities described in the biennial report.

Procedures To Certify Nations Identified as Having Fishing Vessels Engaged in IUU Fishing

Subsequent to the identification, notification, and consultation processes outlined above, the Secretary will provide either a positive or negative certification to nations that have been identified in the biennial report as having fishing vessels engaged in IUU fishing. The Secretary of Commerce shall issue a positive certification to an identified nation upon making a determination that such nation has taken appropriate corrective action to address the activities for which such nation has been identified in the biennial report to Congress. When making such determination, the Secretary shall take into account whether a nation has provided documentary evidence that it has taken appropriate corrective action to address the IUU fishing activity described in the biennial report, or the relevant international fishery management organization has implemented measures that are effective in addressing the IUU fishing activity by vessels of the nation. NMFS will notify nations prior to a formal certification determination, and will provide such nations an opportunity to support and/or refute preliminary certification determinations, and communicate any corrective actions taken to address the IUU fishing activity described in the biennial report to Congress.

Corrective actions that NMFS will consider include, but are not limited to, a nation's:

- Efforts towards improving data collection, catch monitoring, and reporting programs;
- Record of implementation of or compliance with international measures to address IUU fishing;
- Participation in technical assistance and capacity building programs to address IUU fishing and enhance regulatory efforts, as well as enforcement;
- Adequacy of surveillance, enforcement, and prosecution to promote compliance with conservation and management measures and respond to non-compliance;
- Response to IUU fishing activity;
- Participation in voluntary international efforts to combat IUU fishing (*e.g.*, the International Monitoring, Control, and Surveillance (MCS) network or other cooperative enforcement and compliance networks); and
- Cooperation with other governments in enforcement, apprehension, and prosecution efforts related to those vessels of the identified nation that have engaged in IUU fishing.

To determine whether a positive certification is warranted, NMFS will consider the extent to which the IUU fishing activities described in the biennial report have been effectively addressed, the likely effectiveness of the nation's actions to deter future IUU activity, and whether measures that are comparable in effectiveness to measures implemented by the United States have been implemented and are being effectively enforced. Such flag State measures may include, but are not limited to:

- Catch and effort monitoring, including licensing and permitting schemes, reporting, and vessel monitoring systems (VMS);
- Programs for data collection and sharing, including observer programs;
- Catch documentation and trade tracking schemes that identify the origin and document the legality of fish from the point of harvest through the point of market/import;
- Trade-related measures, such as import and export controls or prohibitions, to reduce or eliminate trade in fish and fish products derived from IUU fishing;
- Programs that document fish were caught in a manner consistent with, or that does not undermine, conservation and management measures;
- Port State control measures;
- At-sea and dockside inspection schemes;
- Bycatch reduction and mitigation strategies and techniques, such as gear restrictions or requirements, if the IUU fishing activity includes a violation of bycatch reduction and mitigation requirements of an international agreement to which the United States is a party;
- Systems to improve monitoring, control, and surveillance of fishing activities;
- Sufficient sanctions and legal frameworks to support effective enforcement; and
- Measures to protect VMEs from significant adverse impacts from bottom fishing activities in waters beyond any national jurisdiction.

The Secretary of Commerce will make certification determinations pursuant to provisions of the Moratorium Protection Act in accordance with international law, including the WTO Agreement, regarding adoption of trade measures in a fair, transparent, and non-discriminatory manner. When considering whether appropriate corrective action has been taken to warrant a positive certification, NMFS will take into account the outcome of consultations with the identified nation and comments received from such nation. NMFS will also evaluate actions taken by the relevant nation and applicable RFMO to address the IUU fishing activity described in the biennial report, including participation in applicable RFMOs and requests for assistance in building fisheries management and enforcement capacity. NMFS will also consider, as appropriate, whether the affected nation has implemented and is enforcing RFMO conservation and management measures designed to address IUU fishing activities.

The Secretary of Commerce will make the first certification determinations no later than 90 days after promulgation of this rule. Subsequent certification determinations will be published in the biennial report. Identified nations will receive notice of certification determinations.

Once certification determinations are published in the biennial report, NMFS will, working through or in consultation with the Department of State, continue consultations with negatively certified nations and provide them an opportunity to take corrective action with respect to the IUU fishing activities described in the biennial report to Congress.

Procedures To Identify Nations Engaged in PLMR Bycatch

As required under the Moratorium Protection Act, NMFS will also identify, and list in the biennial report to Congress, nations whose fishing vessels are engaged, or have been engaged during the preceding calendar year in fishing activities either in waters beyond any national jurisdiction that result in PLMR bycatch, or beyond the U.S. exclusive economic zone (EEZ) that result in bycatch of a PLMR shared by the United States.

When determining whether to identify a nation as having fishing vessels engaged in the bycatch of PLMRs, NMFS will evaluate, review, and verify appropriate information and evidence that are available to the agency. During this review, NMFS will take into account the extent of the PLMR bycatch and the impact of bycatch on sustainability of the PLMR. NMFS will also consider any actions taken by the nation to address the bycatch, information refuting the allegations of PLMR bycatch, and participation in cooperative research activities designed to address such bycatch. In addition, NMFS will consider whether adequate enforcement authority and capacity exist to promote compliance.

NMFS will also examine if an international organization for the conservation and protection of such PLMR, or an international or regional fishery management organization with a mandate to regulate the fishery in which the bycatch activity in question occurred, exists; and whether the nation whose fishing vessels are engaged, or have been engaged during the preceding calendar year, in bycatch of PLMRs is party to or maintains cooperating status with the relevant international body. NMFS will examine whether the relevant international body has adopted measures that have been demonstrated to end or reduce bycatch of PLMRs; whether the nation is a party or cooperating non-party to the organization; and whether the nation has implemented, and is enforcing, such measures. If an identified nation is not party to the relevant international or regional body, NMFS will examine whether the nation has implemented measures deemed to be effective at addressing the bycatch of such PLMRs, including any measures that have been recommended by a relevant international body. Such measures, where appropriate, may include, but are not limited to:

- Programs for data collection and sharing, including programs to assess the abundance and status of PLMRs and observer programs;
- Bycatch reduction and mitigation strategies, techniques, and equipment, such as gear restrictions and gear modifications; and
- Improved monitoring, control, and surveillance of fishing activities.

Once NMFS has determined that information on PLMR bycatch is credible and provides a reasonable basis to believe or suspect that a nation's fishing vessels are engaged in bycatch of PLMRs, NMFS, acting through or in consultation with the State Department, will initiate bilateral discussions with the identified nation. These discussions will, among other things:

- Seek to corroborate the alleged PLMR bycatch or credible information that refutes such allegations;
- Communicate the requirements of the Moratorium Protection Act to the nation; and
- Encourage such nation to take action to address the alleged PLMR bycatch.

Pursuant to the requirements under the Moratorium Protection Act, NMFS will publish a list of nations that have been identified as having fishing vessels engaged in bycatch of PLMRs in the biennial report to Congress.

Notification and Consultation With Nations Identified as Having Fishing Vessels Engaged in Bycatch of PLMRs

After submission of the biennial report to Congress, the Secretary of Commerce, acting through the Secretary of State, will officially notify nations that have been identified in the biennial report as having fishing vessels that are engaged in bycatch of PLMRs. Within 60 days after submission of the biennial report to Congress, NMFS, acting through or in consultation with the State Department, will notify such nations of the requirements of the Moratorium Protection Act and initiate consultations regarding the bycatch of PLMRs.

Upon submission of the biennial report to Congress, the Secretary of Commerce, acting through or in consultation with the Secretary of State, will:

1. Initiate consultations with the governments of identified nations for the purposes of entering into bilateral and multilateral agreements and treaties with such nations to protect the PLMRs from bycatch activities described in the biennial report; and

2. Seek agreements through the appropriate international organizations calling for international restrictions on the fishing activities or practices described in the biennial report that result in bycatch of PLMRs and, as necessary, request that the Secretary of State initiate the amendment of any existing international treaty to which the United States is a party for the protection and conservation of the PLMRs in question to make such agreements consistent with this subpart.

International Cooperation and Assistance

To the greatest extent possible consistent with existing authority and the availability of funds, NMFS shall provide assistance to nations identified as having vessels engaged in PLMR bycatch. NMFS will also provide assistance to international organizations of which those nations are members to assist with qualifying for a positive certification. Assistance activities may include, where appropriate, cooperative research activities on species assessments and improved bycatch mitigation techniques, improved governance structures, or improved enforcement capacity. NMFS will also encourage and facilitate the transfer of appropriate technology to identified nations or the organizations of which they are members to assist identified nations in qualifying for a positive certification and to assist those identified nations or organizations in designing and implementing appropriate fish harvesting methods that minimize bycatch of PLMRs.

Procedures To Certify Nations Identified as Having Fishing Vessels Engaged in Bycatch of PLMRs

Based on the identification, notification, and consultation processes outlined above, NMFS will certify nations that have been identified in the biennial report as having fishing vessels engaged in bycatch of PLMRs. NMFS will notify nations prior to a formal certification determination and will provide such nations an opportunity to support and/or refute preliminary certification determinations, and communicate any corrective actions taken to address the bycatch of PLMRs described in the biennial report to Congress.

Identified nations will receive either a positive or negative certification from the Secretary of Commerce. A positive certification indicates that a nation has:

1. Provided documentary evidence of the adoption of a regulatory program governing the conservation of the PLMR that is comparable to that of the United States, taking into account different conditions, and which, in the case of pelagic longline fishing, includes mandatory use of circle hooks, careful

handling and release equipment, and training and observer programs; and

2. Established a management plan containing requirements that will assist in gathering species-specific data to support international stock assessments and conservation enforcement efforts for PLMRs. Stock assessments include population assessments.

When determining whether a nation's regulatory program is comparable to measures required in the United States, NMFS will consider whether the program is comparable in effectiveness, taking into account different conditions that could bear on the feasibility and efficacy of comparable measures. If other measures could address bycatch of the PLMRs in question that are comparable in effectiveness, then the implementation of such measures by a nation may be deemed sufficient for purposes of the Moratorium Protection Act. As relevant, NMFS will also consider whether measures have been implemented and effectively enforced including, but not limited to:

- Programs for data collection and sharing, including programs to assess the abundance and status of PLMRs and observer programs;
- Bycatch reduction and mitigation strategies, techniques, and equipment (including training and assistance for bycatch reduction technology and equipment);
- Improved monitoring, control, and surveillance of fishing activities;
- Efforts towards improving data collection, bycatch monitoring, and reporting programs;
- Record of implementation of or compliance with international measures to address bycatch of PLMRs;
- Participation in technical assistance and capacity building programs to reduce bycatch;
- Surveillance, enforcement, and prosecution program and their adequacy for promoting compliance with conservation and management measures and responding to non-compliance;
- Response to PLMR bycatch; and
- Cooperation with other governments in enforcement, apprehension, and prosecution efforts related to those vessels of the identified nation that have engaged in PLMR bycatch.

The Secretary of Commerce will make certification determinations pursuant to provisions of the Moratorium Protection Act in accordance with international law, including the WTO Agreement, regarding adoption of trade measures in a fair, transparent, and non-discriminatory manner. When making certification determinations, the Secretary of Commerce will, in consultation with the Secretary of State, evaluate the information discussed above, comments received from such nation, the consultations with each identified nation, and subsequent actions taken by the relevant nation to address the bycatch of PLMRs described in the biennial report, including requests for assistance in the implementation of measures comparable to those of the United States and establishment of an appropriate management plan. The Secretary of Commerce will also take into account whether the nation participates in existing certification programs, such as that authorized under section 609 of Public Law 101–162, or the affirmative finding process under the International Dolphin Conservation Program Act (111 Stat. 1122). Nothing in this rulemaking will modify such existing certification procedures.

The Secretary of Commerce will publish certification determinations in the biennial report to the Congress. Identified nations will receive notice of certification determinations.

Once certification determinations are published in the biennial report, NMFS will, working through or in consultation with the Department of State, continue consultations with the negatively-certified nations and provide them an opportunity to take corrective action with respect to the bycatch of PLMRs described in the biennial report to Congress.

Effect of Certification Determinations

If nations identified as having fishing vessels engaged in IUU fishing and/or bycatch of PLMRs receive a positive certification from the Secretary of Commerce pursuant to the Moratorium Protection Act, no actions will be taken against such nations.

If an identified nation fails to take sufficient action to address IUU fishing and/or bycatch of PLMRs and does not receive a positive certification from the Secretary of Commerce, the nation could face denial of port privileges for its fishing vessels, prohibitions on the import of certain fish and fish products into the United States, and other appropriate measures. In determining the appropriate course of action to recommend to the President, the Secretary of Commerce and other Federal agencies, as appropriate, will take into account the nature, circumstances, extent, duration, and gravity of the fishing activity for which the initial identification was made; the degree of culpability; any history of prior IUU fishing activities or bycatch of PLMRs; and other relevant matters. The Secretary of Commerce, in cooperation with the Secretary of State, may initiate further consultations with identified nations that fail to receive a positive certification prior to determining an appropriate course of action.

The Secretary of Commerce will recommend to the President appropriate measures, including trade restrictive measures, to be taken against identified nations that have not received a positive certification, to address the relevant IUU fishing activity and/or fishing activities or practices that result in PLMR bycatch for which such nations were identified in the biennial report. The Secretary will make such recommendations on a case by case basis in accordance with international obligations, including the WTO Agreement. Adoption of trade measures will be done in a fair, transparent, and non-discriminatory manner. If certain fish or fish products of a nation are subject to import prohibitions, to facilitate enforcement, NMFS may require that other fish or fish products from that nation that are not subject to the import prohibitions be accompanied by documentation of admissibility to be developed by NMFS. If NMFS decides to require that such fish or fish products be accompanied by documentation of admissibility, it will develop this documentation through a future rulemaking action and give the public an opportunity to review and provide comment.

In implementing the certification procedures under the Moratorium Protection Act, in order to inform U.S. ports that cargo originating from a foreign port may be subject to import restrictions, NMFS intends to collaborate with other Federal agencies and, as appropriate, take advantage of existing prior notification procedures, such as those required under section 343(a) of the Trade Act of 2002, or those proposed for further development under the International Trade Data System (ITDS) established under the Security and Accountability for Every (SAFE) Port Act of 2006 (Pub. L. 109–347). NMFS also intends to utilize existing documentation schemes developed by RFMOs, as appropriate. These efforts will be undertaken to help mitigate the effects of a negative certification determination on U.S. industry.

If certain fish or fish products are prohibited from entering the United States, within six months after the imposition of the prohibition, the Secretary of Commerce shall determine whether the prohibition is insufficient to cause that nation to effectively address the IUU fishing described in the biennial report, or that nation has retaliated against the United States as a result of that prohibition. The Secretary

of Commerce shall certify to the President each affirmative determination that an import prohibition is insufficient to cause a nation to effectively address such IUU fishing activity or that a nation has taken retaliatory action against the United States. This certification is deemed to be a certification under section 1978(a) of Title 22, which provides that the President may direct the Secretary of the Treasury to prohibit the bringing or the importation into the United States of any products from the offending country for any duration as the President determines appropriate and to the extent that such prohibition is sanctioned by the WTO.

Alternative Procedures

Section 609(d)(2) of the Moratorium Protection Act authorizes the Secretary of Commerce to establish alternative procedures for importing fish or fish products from a vessel of a harvesting nation identified under section 609(a) of the Act in the event that the Secretary cannot reach a certification determination for such identified nation by the time of the next biennial report. The alternative procedures shall not apply to fish or fish products from identified nations that have received either a negative or a positive certification under this Act. Under these alternative procedures, the Secretary of Commerce may allow entry of fish or fish products on a shipment-by-shipment, shipper-by-shipper, or other basis as long as specified conditions are met.

For nations that have been identified as having fishing vessels engaged in IUU fishing and have not received a certification from the Secretary of Commerce, certain fish or fish products of that nation may be eligible for alternative certification procedures. To qualify for the alternative certification procedures, NMFS must determine, based on the best available information, that the relevant vessel has not engaged in IUU fishing, or been identified by an international fishery management organization as participating in IUU fishing activities.

Section 610(c)(4) of the Moratorium Protection Act requires the Secretary of Commerce to establish alternative procedures for importing fish or fish products from a vessel of a harvesting nation identified under section 610(a) of the Act in the event that the Secretary cannot reach a certification determination for such identified nation by the time of the next biennial report. The alternative procedures shall not apply to fish or fish products from identified nations that have received either a negative or a positive certification under this Act. Under these alternative procedures, the Secretary of Commerce may allow entry of fish or fish products on a shipment-by-shipment, shipper-by-shipper, or other basis as long as specified conditions are met.

To qualify for the alternative certification procedures, NMFS must determine that imports were harvested by practices that do not result in bycatch of a protected living marine resource, or were harvested by practices comparable to those required in the United States, taking into account different conditions that affect the feasibility and efficacy of such practices, and which, in the case of pelagic longline fishing, includes mandatory use of circle hooks, careful handling and release equipment, and training and observer programs. NMFS must also determine that the vessel collects species-specific bycatch data that can be used to support international and regional assessments and efforts to conserve PLMRs. NMFS will make these determinations in accordance with international law, including the WTO Agreement, regarding adoption of trade measures in a fair, transparent, and non-discriminatory manner.

In its implementation of alternative certification procedures, NMFS will seek appropriate documentation to verify that imports were harvested in a manner consistent with the requirements of this subpart, such as chain-of-custody information, VMS reports, or other forms of verification. To the extent practicable, NMFS will rely on existing trade tracking programs to implement alternative procedures.

Responses to Comments on the Proposed Rule

NMFS received comments on the proposed rule, including comments from U.S. industry, non-governmental organizations, Marine Mammal Commission, private citizens, and other nations. Several comments received were not germane to this rulemaking and are not addressed in this section. These comments include potential legislative changes and other actions outside the scope of the statutory mandate.

Several commenters provided broad suggestions that pertain to the overall implementation of the rule. Specifically, many commenters expressed their support for the certification process under the Moratorium Protection Act and the application of trade measures, including sanctions.

NMFS received numerous comments asking the agency to adopt the strongest measures possible to address IUU fishing and the bycatch of PLMRs, as mandated by Congress, in order conserve these resources and level the playing field for U.S. fisherman. Several commenters recommended that NMFS hold other nations to the same rigorous and strict standards to which U.S. fishermen are subject, especially for Atlantic bluefin tuna fishing, and expressed dissatisfaction that NMFS is not aggressively utilizing trade sanctions as a tool to combat IUU fishing of shared highly migratory fish stocks.

A comment was made that the threat of trade sanctions is often more effective than the actual imposition and that sanctions should only be used as a last resort if at all.

In the following section, NMFS addresses the issues that directly relate to the measures in the rulemaking.

General Comments

Comment 1: One commenter recommended that NMFS coordinate the proposed rule with the European Union's approach in order to have a unified global process to address IUU fishing.

Response: NMFS is obligated to adhere to the Moratorium Protection Act that sets forth identification, consultation, and certification procedures to address IUU fishing and the bycatch of PLMRs. These procedures differ from the regulatory process of the European Union (EU) to address IUU fishing. EU Council Regulation 1005/2008, which was passed in the fall of 2008, requires, among other things, that most exports of seafood to the European market be accompanied by a catch document signed by a flag-state competent authority that the product was caught legally. NMFS is committed to working with our partners in the European Union in order address the global problem of IUU fishing and the bycatch of PLMRs.

Comment 2: A commenter expressed concern that the implementation of the proposed rule will result in increased expenses to U.S. suppliers as well as to the Federal government.

Response: The regulations will not directly increase costs to U.S. suppliers. However, it is possible to anticipate increased costs to U.S. suppliers. If a foreign nation's ability to import certain fish or fish products into the United States is limited upon receipt of a negative certification and application of trade restrictive measures, this may impact the ability of U.S. suppliers to access fish or fish products from that nation. Alternative sources of fish and fish products could mitigate the impacts

of restrictions on U.S. suppliers' access to fish and fish products.

Comment 3: Several commenters suggested that NMFS should include in the biennial report to Congress information on the status of the RFMOs' compliance committees and the performance reviews as an indicator of the effectiveness of the RFMOs actions related to implementing measures to avoid IUU and bycatch of PLMRs.

Response: NMFS will include in the biennial report to Congress relevant information on RFMOs and their measures to address IUU fishing and the bycatch of PLMRs.

Comment 4: A suggestion was made that NMFS prioritize situations where IUU is rampant or bycatch of PLMRs is clearly excessive, thus focusing the imposition of trade measures on the most egregious situations.

Response: NMFS is required to address IUU fishing activity and the PLMR bycatch. When making identification decisions for both IUU fishing and bycatch, NMFS will consider the history, nature, circumstances, extent, duration, and gravity of the activity in question.

Definition of IUU Fishing

Comment 5: Several commenters suggested that NMFS should expand the definition of IUU fishing. Suggestions included addressing unreported fishing and fishing activities that are misreported to the relevant national or international fishery management authority, as well as violations of agreements to which the United States is not a party. Others suggested broadening the IUU fishing definition to include illegal incursions of a nation's vessels into the waters of other nations (including U.S. waters), flagrant reflagging under flags of convenience, beneficial ownership, and lack of registration.

Commenters also recommended that the definition of IUU fishing be as consistent as possible with the United Nation's International Plan of Action to Prevent, Defer and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA–IUU), as well as the UNFAO Agreement on Port State Measures.

Response: At this time, NMFS believes it is not appropriate to modify the definition of IUU fishing through this regulatory action. NMFS appreciates the public is interested in having this definition modified, but NMFS has decided not to revise the definition until the agency is able to understand the implications for implementing the United Nations Food and Agriculture Organization's Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (Port State Measures Agreement). Although this agreement has been signed by the United States, it has not been ratified. At present, NOAA plans to revise the definition of IUU fishing in a subsequent rulemaking action to help ensure that the definition complies with our international as well as statutory obligations. In its development of the new definition, NMFS will consider what clarifications may be helpful for the definition, and will seek and take public comments on the definition. NMFS will also take the comments received in response to this rulemaking into account when formulating the new definition of IUU fishing.

Comment 6: Several commenters were encouraged that NMFS' definition of fishing vessels relative to its definition of IUU fishing extended to "vessels that are used for fishing or any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing, bunkering or purchasing catch, aiding or assisting one or more vessels at sea in the performance of such activity."

Response: NMFS has decided to retain the proposed definition of "fishing vessels" in the final rule without amendment.

Comment 7: A nation commented that the failure to meet the commitments of Resolution 61/105 of the United Nations General Assembly and the International Guidelines for the Management of Deep-sea Fisheries in the High Seas should not be defined as IUU fishing, as there are no internationally agreed upon standards that would support such a determination. In addition, the nation suggested that NMFS only consider including flag State responsibilities related to these guidelines for deep seas fisheries in the definition of IUU fishing after the establishment of internationally agreed criteria for assessing flag State performance.

Response: The portion of the definition of IUU fishing referenced by the commenter is mandatory under the Moratorium Protection Act. The aspect of the IUU fishing definition the commenter refers to includes fishing activity that has a significant adverse impact on seamounts, hydrothermal vents, cold water corals and other vulnerable marine ecosystems located beyond any national jurisdiction, for which there are no applicable conservation or management measures, including those in areas with no applicable international fishery management organization or agreement. This portion of the definition is required under the Moratorium Protection Act.

Comment 8: One commenter recommended that NMFS include in its definition of IUU fishing the failure of the flag State to report the catch of its fishing vessels to the RFMO that it is party to, or other applicable authorities in its definition of IUU fishing.

Response: Under the Moratorium Protection Act, NMFS is authorized to identify nations based on the IUU fishing activity of their vessels. If the vessels of a flag State fail to report their catch to the relevant RFMO and this action is required under a conservation and management measure of an RFMO to which the United States is a party, then failure to report the catch could be a potential basis for identifying the nation.

Concerns Regarding IUU Fishing

Comment 9: A comment was made in regards to a statement in the biennial report to Congress that "* * * *more than one vessel must be engaged in IUU fishing for purposes of identification.*" The commenter recommended that NMFS reinterpret the statute or attempt to remove legislative language limiting the criterion for identification that a nation must have more than one vessel engaged in IUU fishing. The commenter suggested that nations should be held responsible for any and all IUU fishing activity of their flagged vessels.

Response: NMFS' interpretation of the statute that more than one vessel of a nation must be engaged, or have been engaged, in IUU fishing activity to warrant identification under the Moratorium Protection Act is consistent with the statutory language.

Comment 10: NMFS received a comment recommending improvements in traceability of catches to prevent IUU fishing. It was suggested that Catch Documentation Schemes (CDS) would help with these improvements.

Response: NMFS agrees with the commenter and supports the adoption of tools to address traceability of catch, including catch documentation schemes, to help address IUU fishing, consistent with the purposes of the Moratorium Protection Act.

Definition of Bycatch of PLMRs

Comment 11: One commenter advised NMFS to revise the definition of bycatch of PLMRs to encompass any interaction with a non-target living marine resource that results in the capture, serious injury or mortality of that resource, regardless of whether the resource is discarded or kept for personal or commercial use. The commenter was concerned that the way the current definition is phrased

might suggest that if non-target living marine resources were to be kept on the vessel, they would not be considered bycatch, which would undermine efforts to conserve these species and reduce their bycatch.

Another commenter recommended that NMFS' definition of bycatch of PLMRs be revised to explicitly refer to any encounter of non-target living marine resources with fishing gear, not just encounters that result in mortality or serious injury.

Response: NMFS sought to address these comments in the definition of bycatch in the final rule. The revised definition of PLMRs in the final rule is as follows: "Bycatch means the incidental or discarded catch of protected living marine resources or entanglement of such resources with fishing gear."

Concerns Regarding the Bycatch of PLMRs

Comment 12: NMFS received a comment from the Marine Mammal Commission regarding the lack of available information and standards with respect to the bycatch of PLMRs, as well as the incomparable reporting requirement timelines and deadlines between IUU fishing and bycatch of PLMRs. Specifically, under the IUU fishing provisions, the Secretary has 60 days after submission of the biennial report to Congress to notify identified nations and to initiate consultations, whereas the proposed rule only suggests that this occur "as soon as possible" with respect to the bycatch of PLMRs. Therefore, the Marine Mammal Commission recommends that NMFS establish deadlines for notification, consultation, and certification findings with respect to PLMR bycatch.

Response: NMFS sought to address these comments by standardizing the timelines and deadlines for information collection, notification, consultation, and certification decisions for IUU fishing and bycatch of PLMRs under the Moratorium Protection Act, in a manner consistent with the statutory text of the Act.

With respect to nations that are identified as having fishing vessels engaged in IUU fishing or bycatch of PLMRs, NMFS, acting through or in cooperation with the State Department, will notify such nations of the requirements of the Moratorium Protection Act and initiate consultations within 60 days of submission of the biennial report to Congress.

Certification determinations will be made for nations that are identified as having vessels engaged in IUU fishing or bycatch of PLMRs on a biennial basis to coincide with publication of the biennial report to Congress.

Comment 13: The Marine Mammal Commission commented that the lack of basic information on pelagic and transboundary PLMRs that are often caught as bycatch is of serious concern, as this will severely hamper NMFS' efforts to identify bycatch problems and evaluate the adequacy of a nation's regulatory program.

Response: NMFS shares the concerns raised by the commenter regarding the lack of basic information on PLMR bycatch and, based on the absence of this information, recognizes the challenges associated with identifying nations whose fishing vessels are engaged in bycatch of PLMRs and evaluating other nations' regulatory programs. To address this concern, as explained in the prior response, NMFS plans to examine PLMR bycatch information from as broad a timeframe as possible under the Act.

Comment 14: The Marine Mammal Commission recommended that NMFS work with the Department of State to protect PLMRs by promoting protective actions in relevant international fora, and through amendments to treaties to which the United States is party, such as requiring the collection and sharing of data pertaining to fishery interactions, stock status, and bycatch estimates and implementing of bycatch mitigation measures.

Response: Consistent with the legislative intent of the Moratorium Protection Act, NMFS will work with the Department of State to protect PLMRs through the adoption of measures in the relevant international fora that require reporting of bycatch data and use of bycatch mitigation gear. NMFS will also continue its efforts to work cooperatively with nations that lack sufficient capacity for fisheries monitoring, control, surveillance, and bycatch mitigation and assist these nations achieve sustainable fisheries.

Comment 15: A commenter suggested that NMFS distinguish between a particular instance of fishing activity that results in bycatch of PLMRs, and a consistent disregard of bycatch reduction measures.

Response: NMFS has addressed this comment in the final rule by requiring that the agency take into account all relevant matters when determining whether to identify nations whose vessels engaged in PLMR bycatch including, but not limited to, the history, nature, circumstances, extent, duration, and gravity of the bycatch activity in question.

Comparability

Comment 16: NMFS received numerous comments regarding the effectiveness of measures to reduce IUU fishing and bycatch of PLMRs. Specifically, the Marine Mammal Commission suggested that the framework to determine the comparability of effectiveness between countries' measures was too broad, and that NMFS needs to specify what standards will be used to assess comparability in effectiveness by other nations, especially with respect to the bycatch of PLMRs.

Response: In order to identify a nation for PLMR bycatch, under this final rule NMFS will also determine that the nation has not implemented measures designed to end or reduce such bycatch that are comparable in effectiveness to U.S. regulatory requirements, and that the relevant international organization has not adopted effective measures to end or reduce bycatch of such species.

In its determination of whether programs to address IUU fishing or PLMR bycatch are comparable in effectiveness to those of the United States, NMFS will examine programs that have been adopted by the United States to address the relevant activity for which a nation has been identified, and compare such programs with those that have been adopted by the nation, taking into account different conditions that could bear on the program's feasibility and efficacy. Given the different IUU fishing and bycatch activities for which a nation could be identified under the Act, it may be difficult and overly prescriptive to establish specific criteria for programs addressing all such activities. NMFS may, however, seek to provide further clarification on its identification and certification procedures, including any standards, through internal guidance.

Data Utilized for Certification

Comment 17: Several comments recommended that in addition to evaluating evidence "available" to NMFS, the proposed rule should clearly state that the NMFS will actively seek out information from industry groups and foundations, international fishery management bodies, and nations wishing to export fish or fish products into the United States. Similarly, a commenter suggested that in addition to using data offered by other international organizations and from among other sources to make an identification determination, as indicated in the proposed rule, NMFS should also seek information from industry groups such as the International Seafood

Sustainability Foundation (ISSF) and individual companies. The Marine Mammal Commission recommended that NMFS establish procedures to allow various U.S. government agencies, foreign governments, international fishery management organizations, NGOs, industry organizations and the public to provide and exchange pertinent information for the identification and certification process.

Response: NMFS concurs with the comments provided and will actively seek information from relevant sources with respect to the identification processes under the Moratorium Protection Act. As an illustration, NMFS published and circulated two notices in the **Federal Register** on March 5, 2010 (75 FR 10213), and April 6, 2010 (75 FR 17379), soliciting information on IUU fishing and PLMR bycatch activities prior to the development of the list of nations that were identified in the January 2009 Biennial Report to Congress, and that will be identified in the 2011 report. NMFS will continue to solicit information from the public that could be used for the identification processes under the Moratorium Protection Act, actively seek information from RFMOs and international organizations for the protection of PLMRs, and examine other information deemed relevant for our decision-making processes.

Comment 19: A commenter recommended that NMFS give preference to government information, information that has undergone a peer-review process, or information that has been agreed upon through tribunals or some other legal mechanism in making decisions regarding certification.

Several commenters also recommended that NMFS utilize "additional resources" to verify documentation on which a certification will be made; however, none of the commentators identified what those "additional resources" would be.

Further, NMFS received numerous comments with respect to both IUU fishing and the bycatch of PLMRs, regarding the lack of abundance and poor quality of the information that would be available and possibly used to identify and certify nations.

Response: When determining whether to identify a nation as having fishing vessels engaged in IUU fishing or bycatch of PLMRs, as well as certifying an identified nation, NMFS will analyze and assess all available information from a variety of sources. NMFS will exercise due diligence in evaluating which information and evidence is most appropriate for use in identifying and certifying nations. This information could include data actively gathered by the U.S. Government as well as data offered by other nations, or international organizations (such as RFMOs), institutions, or arrangements that provides a reasonable basis to believe or suspect that a nation's vessels have been engaged in IUU fishing or bycatch of PLMRs.

Comment 20: A commenter recommended that NMFS establish a process to notify nations and international fishery management bodies of the Moratorium Protection Act requirements.

Response: The Moratorium Protection Act requires notification and as such, the final regulations lay out what NMFS will communicate to nations. NMFS has been actively conducting outreach and communicating the requirements of the Moratorium Protection Act to nations and international fishery management organizations over the past 3 years.

Comment 21: One commenter requested that NMFS provide information regarding the efforts that the United States has undertaken to eliminate its own IUU fishing and PLMR bycatch. The commenter expressed that this would not only facilitate earlier compliance, but also help in information-gathering and negotiations.

Response: NMFS will summarize efforts to address PLMR bycatch and, as appropriate, may provide information on efforts to address IUU fishing in the biennial report to Congress.

Comment 22: A comment was made by a nation that NMFS should publish all information sources used in the certification process.

Response: NMFS will publish the information sources, as appropriate, that are used in the certification decision-making under the Moratorium Protection Act in the biennial report to Congress.

Identification and Certification

Comment 23: A comment suggested that in order to make the task of identifying and listing a nation easier, the proposed language for section 608(c)(1) of the High Seas Driftnet Fishing Moratorium Protection Act in H.R. 1080 section 2(b), should be clarified so that if vessels and vessel owners are identified as engaging in IUU fishing by an international fishery management organization or through an international agreement, the vessel would automatically be added to the Secretary's list and subject to possible action under the proposed section 608(c)(2).

Response: Legislative changes are outside the scope of this action. However, NMFS notes that, when considering an IUU fishing identification under the Moratorium Protection Act, NMFS will examine information regarding vessels flagged to a nation that is identified by an international fishery management organization to which the United States is a party as having engaged in IUU fishing. The Moratorium Protection Act provides for consideration of vessels' IUU fishing activities during the preceding 2 years.

Comment 24: A commenter recommended that, in addition to identifying nations based on vessel-specific activity, NMFS also utilize trade analysis that compares reported catches and trade data for the purposes of identifying IUU fishing occurring in a fishery. The commenter is concerned that in some situations vessel level information will not be sufficient to support identification, but rather trade analysis could be a strong indication that the fishery as a whole is not being adequately monitored and enforced by the particular country or set of countries and therefore the products from that fishery should be considered IUU-derived.

Response: Under the Moratorium Protection Act, NMFS is required to identify nations whose vessels engage in IUU fishing activity or bycatch of PLMRs. Therefore, a determination must be made based upon vessel specific information.

Comment 25: A comment recommended that the United States pursue schemes requiring all fishing vessels to have International Maritime Organization numbers, or an equivalent system for smaller vessels. It was suggested that in order to encourage vessel owners to register with an International Maritime Organization system, NMFS could automatically list any unregistered vessel.

Response: NMFS supports efforts made at the international level to enhance the identification and encourage registration of all fishing vessels, which would improve the tracking of vessel activities and compliance with international registration requirements. To the extent that vessels of a nation are fishing without authorization in violation of a conservation and management measure of an RFMO, NMFS will consider identification of these nations as required under the Moratorium Protection Act.

Comment 26: One comment recommended that NMFS not only identify and list nations for having vessels engaged in IUU fishing, but also the specific vessel as well as the

fisheries in which they are engaged. The commenter was concerned that, under the current regulations, all fishing vessels flying the flag of an identified country will be incriminated, as opposed to only those vessels or fisheries actually engaged in IUU fishing.

Response: NMFS will, to the extent practicable, identify the specific vessels of a nation that are engaged in IUU fishing activities for purposes of identification under the Moratorium Protection Act in the biennial report to Congress.

Comment 27: A nation commented that it was pleased to see that consultation is a key aspect of the identification and certification process. The nation recommended that NMFS consult in a way to ensure the transparency and fairness of these processes.

Response: NMFS agrees that consultations are a key aspect of the identification and certification processes under the Moratorium Protection Act. NMFS will seek to implement the Moratorium Protection Act to ensure fairness and transparency.

Comment 28: NMFS received a question from a nation requesting clarification of the documentation required with respect to § 300.205(b)(1) (Such finding may include a requirement that fish or fish products from such nations be accompanied by documentation of admissibility.).

Response: If an identified nation fails to receive a positive certification from the Secretary of Commerce, and the President determines that certain fish and fish products from that nation are ineligible for entry into the United States and U.S. territories, then NMFS may require that fish or fish products not subject to the import restrictions from the nation be accompanied by admissibility documentation to be developed by NMFS. This requirement would be put into place if deemed necessary to assist with monitoring and compliance with the import prohibitions.

Comment 29: A comment from a nation stated that with respect to § 300.205(a)(2) (*"* * * If there is no applicable international fishery agreement, the Secretary of Commerce shall not recommend import prohibitions that would apply to fish or fish products caught by vessels not engaged in IUU fishing* * * *"), both the intent and the language of this article are unclear. The nation recommended that NMFS clearly explain the effects of negative certification and to whom it applies in relation to bycatch of PLMRs.

Response: NMFS has revised the final rule to mirror the text of the Act more closely. In response to the comment provided, NMFS clarifies that, for nations identified under § 300.202(a) that are not positively certified, NMFS believes that import prohibition recommendations should be made with respect to fish or fish products managed under the applicable international fishery agreement. If there is no applicable agreement, import prohibition recommendations should be made with respect to fish or fish products caught by vessels engaged in the IUU fishing activity. For nations identified under § 300.203(a) that are not positively certified, NMFS believes that import prohibition recommendations should be made with respect to fish or fish products caught by the vessels engaged in the relevant activity for which the nation was identified.

Comment 30: A nation requested that NMFS clarify § 300.203(d)(2)(ii) ("Such nation has established a management plan that will assist in the collection of species-specific data on PLMR bycatch to support international stock assessments and conservation efforts for PLMRs"). Specifically, the nation wanted to know if PLMRs include species that are managed by an international fishery management organization, and the likelihood of having international stock assessments and conservation efforts for PLMRs. The nation recommended that NMFS delete "international stock assessments" as they are captured under broader "conservation efforts."

Response: The definition of PLMRs set forth in the Moratorium Protection Act exempts those species, with the exception of sharks, that are managed by an RFMO. The statute requires that nations identified as having vessels engaged in PLMR bycatch establish a management plan that will assist in the collection of species-specific data for use in international assessments in order to receive a positive certification.

Comment 31: A commenter recommended that the United States place the burden of proof on the nations wishing to export product to the United States that they have not engaged in IUU fishing or PLMR bycatch. The commenter suggested that by placing the burden of proof on the exporting nation, the United States will encourage other nations to enhance their monitoring and enforcement requirements to eliminate IUU fishing and bycatch of PLMRs.

Response: NMFS does not have authority under the Moratorium Protection Act to require that nations bear the burden of proving that their exports to the United States were harvested by vessels that have not engaged in IUU fishing or PLMR bycatch.

Comment 32: Several commenters recommended that deadlines for certification findings with respect to bycatch of PLMRs need to be established. Specifically, a timeline should be created by which nations are to meet the applicable comparability requirements or face certification.

Response: In this final rule, NMFS clarifies that nations identified for having vessels engaged in PLMR bycatch meet the requirements for a positive certification prior to the subsequent biennial report to Congress. Therefore, each identified nation will have approximately 2 years to take sufficient corrective action before a certification decision is made.

Comment 33: A commenter suggested that NMFS should evaluate not only the statutory or regulatory requirements that apply to a fishery but also the effectiveness of a nation's efforts to achieve compliance with those requirements. Thus, the proposed rule should provide greater detail on the types of data and information that will be required from nations and the standards that will be used to judge the sufficiency of documentary evidence for certification.

Response: In its implementation of the Moratorium Protection Act, NMFS will evaluate whether a nation identified as having fishing vessels engaged in IUU fishing or PLMR bycatch has taken appropriate corrective action and is implementing and enforcing such actions. In its evaluation, NMFS will consider several types of documentary evidence and will work with the nation to examine what information is available to determine whether appropriate corrective action is taken. For example, NMFS will examine logbook data, laws and regulations to address IUU fishing activity, and written documentation of permit revocation, among other things.

Comment 34: A comment was made regarding revising the timeline for reporting on the identification process. A commenter suggested that stipulating such reports as "biennial" alone is insufficient, as subsequent reports could be provided two years to the calendar year rather than the calendar date. Specifically, a commenter recommended that the language in § 300.202(a)(1) of the proposed regulation be revised to read: "NMFS will identify and list, in a biennial report provided to Congress, no later than 2 years after the date of the prior

biennial report, nations whose fishing vessels are engaged, or have been engaged at any point during the preceding two calendar years, in IUU fishing" (recommended modifications in italics).

Response: NMFS is retaining the text as proposed, as it is consistent with section 607 of the Moratorium Protection Act, which requires the biennial report to be produced 2 years after enactment of the MSRA and every 2 years thereafter.

Comment 35: Several comments recommended that the time period in which IUU and bycatch activities are considered for identifying countries should be extended to 3 years. Commenters expressed concern that if NMFS reports on a biennial basis and only considers bycatch of PLMRs during the previous calendar year, data from every other year would not be considered in the report. Secondly, several commenters expressed concern that the current two-year time period limits NMFS from effectively collecting sufficient catch data and information on bycatch.

Response: As reflected in prior comments and responses above, NMFS recognizes the concerns regarding the availability of data and information for purposes of making identifications under the Moratorium Protection Act. NMFS plans to examine PLMR bycatch information from as broad a timeframe as possible under the Act. For IUU fishing, NMFS will examine information on IUU fishing activities during a 2-year period, consistent with the Act.

Comment 36: NMFS received several comments in support of the idea of having alternative certification procedures on a shipper-by-shipper basis. In addition, the Marine Mammal Commission commented that alternative certification procedures should require rigorous chain-of-custody documentation, greater controls on transshipment than currently exist, and real-time monitoring and verification to substantiate that individual vessels, shipments, or shippers fully comply with the bycatch reduction measures. They also recommended that NMFS defer the implementation of alternative certification procedures until nations or RMFOs can adopt monitoring and verification procedures coupled with mandatory real-time tracking and documentation of products obtained in compliance with bycatch reduction procedures.

Response: NMFS recognizes the value of establishing alternative certification procedures on a shipper-by-shipper basis for those identified nations that have not received a certification decision from the Secretary of Commerce. In the implementation of the Moratorium Protection Act, the Secretary of Commerce intends to issue a positive or negative certification decision for each nation that is identified as having vessels engaged in either IUU fishing or PLMR bycatch. However, NMFS will use alternative procedures in the case that a certification decision cannot be reached. For nations that are negatively certified, entry of fish or fish products not subject to the import prohibitions could be facilitated by accompaniment of these products by documentation of admissibility under § 300.205(b)(2).

Comment 37: One commenter recommended that NMFS recognize the existing traceability system used for tuna products and its proven track record, and clarify that for tuna products the Secretary intends to use the alternative procedures authority, absent some new information.

Response: NMFS recognizes the effective existing systems used for tracking the trade of tuna products. In its implementation of alternative certification procedures for this particular species, NMFS will rely on existing trade tracking programs and seek chain-of-custody documentation, real-time monitoring and verification to substantiate that individual vessels, shipments, or shippers fully comply with requirements of these procedures.

Comment 38: A commenter recommended that a strict set of criteria be put in place so that countries know what is expected of them in terms of making adequate reforms, and so that the public can understand the criteria by which decisions are made in terms of certifications.

Response: Given the broad scope of IUU fishing and bycatch activities for which a nation could be identified, it is difficult to predict what types of data and information will be required of nations, or what standards would need to be met to receive a positive certification in each specific case. Rather, NMFS will determine the data, information, and standards on a case-by-case basis.

Comment 39: A commenter recommended that public consultations be built into the certification process as this will help ensure transparency in decision making about how a positive or negative certification is made.

Response: The Moratorium Protection Act requires the Secretary of Commerce to notify nations prior to certification, and provide such nations with an opportunity to comment on the certification determinations. NMFS will provide notice of the official certifications in the subsequent biennial report to Congress.

Trade Sanctions

Comment 40: A few commenters stated that the Moratorium Protection Act specifies that the negative certification of a nation, or lack of certification with respect to IUU fishing activity or bycatch of PLMRs, triggers mandatory import prohibitions and provides that the President "shall" direct that importation of fish and fish products be prohibited immediately upon being notified that a nation is identified as having engaged in IUU fishing or PLMR bycatch, or if consultations with the government of such a nation have not concluded satisfactorily within 90 days. However, the commenter finds that the rule conflicts with the Act, as it states that such nations "may be subject" to import prohibitions. The commenter recommends that NMFS clarify the rule to reflect the mandatory requirements of the Act, as well as the stated timeline for implementing import prohibitions.

Response: The Secretary of Commerce only has the authority to make recommendations to the President on import prohibitions of fish or fish products. Thus, the rule was drafted to focus on the Secretary's roles and actions.

Comment 41: NMFS received a comment recommending that the proposed rule clearly identify which fish products or fishing vessels of negatively certified nations would be subject to the import prohibitions. Similarly, a nation expressed that it is not clear from the proposed rule whether all fish products or all fishing vessels of a negatively certified nation would be subject to import prohibitions. The nation recommended that if import prohibitions are applied only to some fish products or some fishing vessels, NMFS should clarify the criteria that will be used to make that determination.

Response: The scope of any trade-related actions would be at the discretion of the President. However, in making recommendations to the President with respect to prohibitions on the importation of fish and fish products from nations identified as having vessels engaged in IUU fishing or PLMR bycatch that did not receive a positive certification from the Secretary of Commerce, NMFS will take into account the fish and fish products affected by the IUU fishing or PLMR bycatch activity in question.

Comment 42: One commenter suggested that punitive measures should not be limited solely to nations; penalties or trade restrictions should

also be imposed on vessel operators, fishing masters, senior executives, directors of companies, and traders deemed to be engaged in, involved with, or benefitting from IUU fishing.

Response: The Moratorium Protection Act only provides authority for the Secretary of Commerce to identify and certify nations for the activities of its vessels.

Changes From Proposed Action

In addition to streamlining the final rule to reduce duplication and ease readability, NMFS has made several changes in the final rule to respond to public comments, provide clarification, and revise some text to reflect better text in the Act. The key changes are outlined below.

1. Outreach Prior to Identification

In its implementation of the identification procedures under the Moratorium Protection Act, NMFS will communicate with nations regarding alleged IUU fishing and bycatch activities prior to a formal identification. This outreach process, which was described in the preamble of the proposed rule, will provide NMFS with a means of verifying information and building a more robust record in support of identification decisions. In the preamble of the final rule, NMFS clarified that it will consider action taken by nations in response to IUU fishing, as well as cooperative research conducted by nations to address bycatch activities prior to making formal identification decisions. This will allow NMFS to use the identification and certification procedures effectively to address IUU fishing and bycatch, rather than penalize nations that have already taken corrective action and/or are working cooperatively to reduce their bycatch.

2. Enforcement and Implementation of International Measures

In the proposed rule, NMFS stated that it would consider whether a nation has implemented and is enforcing international measures to address IUU fishing or PLMR bycatch when making identification and certification decisions. In the preamble of the final rule, NMFS clarified that when evaluating whether a nation has implemented and is enforcing measures that will address IUU fishing and PLMR bycatch when making identification decisions, the agency will also examine whether adequate enforcement measures and capacity exist to help promote compliance. In some cases, NMFS may be able to provide international assistance to a nation to help such nation achieve more sustainable fisheries and obtain a positive certification.

3. Bycatch Definition

In the proposed rule, bycatch was defined as "the discarded catch of any living marine resource and/or mortality or serious injury of such resource due to an encounter with fishing gear that does not result in the capture of such resource." This definition was revised in response to public comments that bycatch should include resources that are caught incidentally due to an encounter with fishing gear, regardless of whether the resource is retained. The bycatch definition was also revised based on concerns that the terms "mortality and/or serious injury" would establish unintentional standards that could not be applied consistently to all protected living marine resources. The definition of bycatch was revised in the final rule to "the incidental or discarded catch of protected living marine resources or entanglement of such resources with fishing gear."

4. Definition of International Fishery Management Agreement

In the proposed rule, this term was defined as "any bilateral or multilateral treaty, convention, or agreement that governs direct harvest of fish and/or directly governs bycatch of fish, sea turtles, or marine mammals." This definition was revised for clarity in the final rule and consistent with the definition of "international fishery management organization" as "any bilateral or multilateral treaty, convention, or agreement for the conservation and management of fish."

5. Notification and Initiation of Consultations for PLMR Bycatch

As specified in the Moratorium Protection Act, the proposed rule required that NMFS notify nations of their identification for having vessels engaged in IUU fishing, and initiate consultations within 60 days after submission of the biennial report to Congress. The proposed rule did not, however, establish a specific deadline for the notification and initiation of consultations with nations identified for having vessels engaged in PLMR bycatch. In response to public comments, NMFS will require that nations identified for having vessels engaged in PLMR bycatch be notified of their identification and consultations be initiated within 60 days after submission of the biennial report to Congress, consistent with the requirements for nations identified for having vessels engaged in IUU fishing.

6. International Cooperation and Assistance

In the final rule, NMFS specified that the agency is required to work cooperatively with nations that are identified for having vessels engaged in PLMR bycatch to address such bycatch and provide appropriate assistance to help such nations obtain a positive certification. These requirements have been included for transparency in the process by which NMFS plans to work cooperatively with other nations and provide assistance where necessary to help achieve sustainable fisheries globally.

7. Scope of Import Prohibitions

NMFS received several public comments asking for clarification regarding the scope of trade sanctions that would be recommended by the Secretary of Commerce to the President when identified nations fail to receive a positive certification. NMFS has revised the final rule to mirror the text of the Act more closely. In the response to comments in this final rule, NMFS explains that, for nations identified under § 300.202(a) that are not positively certified, NMFS believes that import prohibition recommendations should be made with respect to fish or fish products managed under the applicable international fishery agreement. If there is no applicable agreement, import prohibition recommendations should be made with respect to fish or fish products caught by vessels engaged in the IUU fishing activity. For nations identified under § 300.203(a) that are not positively certified, NMFS believes that import prohibition recommendations should be made with respect to fish or fish products caught by vessels engaging in the relevant activity for which the nation was identified.

Classification

This final rule is published under the authority of the Moratorium Protection Act, 16 U.S.C. 1826d–1826k.

This rulemaking has been determined to be significant for the purposes of Executive Order 12866.

A final regulatory flexibility analysis (FRFA) was prepared, as required by section 603 of the RFA. The FRFA describes the economic impact this rule would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A summary of the analysis follows. A copy of this analysis is available from NMFS (*see* **ADDRESSES**).

NMFS received public comments on the proposed rule, and made some revisions to the final rule to clarify provisions. A summary of public comments on the proposed rule and agency responses is provided above. NMFS did not receive comments specifically on the IRFA or on issues related to the IRFA.

This final rule does not apply directly to any U.S. small business, as the rulemaking is aimed at foreign nations whose vessels engage in fishing activities. The universe of potentially indirectly affected industries includes the following: U.S. ports and U.S. seafood harvesters, processors, wholesalers, and importers. Ports generate economic activity across many sectors, including surface transportation; maritime services; cargo handling; federal, state, and local governments; port authorities; importers and consignees; and the banking and insurance sectors. Maritime services include pilots, handlers (food and other supplies), towing, bunkering (fuel), marine surveyors, and shipyard and marine construction. Cargo handling services include longshoremen, stevedoring, terminal operators, warehouse operators, and container leasing and repair.

No U.S. industry is directly affected by this rulemaking, although indirect effects may cause short term disruptions in the flow of seafood imports, and thus potentially impact U.S. businesses. NMFS does not anticipate that national net benefits and costs would change significantly in the long term as a result of the implementation of the proposed alternatives.

Although this action will not have significant economic impacts on a substantial number of small U.S. entities, NMFS decided to analyze different alternatives in the FRFA for the certification procedures in this rule. In order to meet the objectives of the Moratorium Protection Act and this final rule, NMFS cannot exempt small entities, change reporting requirements only for small entities, or use performance or design standards in lieu of the regulatory requirements in the rule. Sections 2.2 and 2.3 of the Environmental Assessment describe the alternatives analyzed for certification procedures for IUU fishing and bycatch.

The Alternatives for Certification for nations whose vessels are engaged, or have been engaged in, IUU fishing activities are as follows: Under Alternative I–1, the No Action Alternative, NMFS would not develop any new procedures to address the certification of nations identified in the biennial report to Congress (called for in section 609(a) of the Moratorium Protection Act) as having vessels that are engaged, or have been engaged during the preceding 2 calendar years, in IUU fishing activities. Under Alternative I–2, the Secretary would provide a positive certification to a nation identified in the biennial report to Congress (called for in section 609(a) of the Moratorium Protection Act) as having vessels that are engaged, or have been engaged during the preceding 2 calendar years, in IUU fishing activities, if such nation has taken corrective action against the offending vessels, or the relevant RFMO has implemented measures that are effective in ending the IUU fishing activities by vessels of the identified nation. Under Alternative I–3, the Secretary would provide a positive certification to a nation identified in the biennial report to Congress (called for in section 609(a) of the Moratorium Protection Act) as having vessels that are engaged, or have been engaged during the preceding 2 calendar years, in IUU fishing activities, if such nation has taken corrective action against the offending vessels, and the relevant RFMO has implemented measures that are effective in ending the IUU fishing activities by vessels of the identified nation.

The Alternatives for Certification for nations whose vessels are engaged, or have been engaged in, bycatch of PLMRs are as follows: Under Alternative B–1, the No action alternative, NMFS would not develop any new procedures to address certification of nations identified in the biennial report to Congress (called for in section 610(a) of the Moratorium Protection Act) as having vessels that are engaged, or have been engaged during the preceding calendar year in bycatch of PLMRs. Under Alternative B–2, to receive a positive certification from the Secretary of Commerce, nations identified in the biennial report to Congress (called for in section 610(a) of the Moratorium Protection Act) as having vessels that are engaged, or have been engaged during the preceding calendar year in bycatch of PLMRs must provide documentary evidence of their adoption of a regulatory program governing the conservation of the PLMR that is comparable in effectiveness with that of the United States, taking into account different conditions, and establish a management plan that will assist in species-specific data collection to support international stock assessments and conservation enforcement efforts for the PLMR. Under Alternative B–3, identified nations must provide documentary evidence of the adoption of a regulatory program for PLMR bycatch that is comparable with that of the United States', taking into account different conditions. Identified nations must also show proof of the identified nation's participation with an international organization governing the conservation of the PLMRs, if one exists, and establish a management plan that will assist in species-specific data collection to support international assessments and conservation efforts, including but not limited to enforcement efforts for PLMRs.

As noted above, NMFS does not anticipate significant economic impacts to U.S. businesses from any of the alternatives analyzed. However, certain importers may be affected by import prohibitions that are imposed on fish or fish products coming into the United States from an identified nation that fails to receive a positive certification. IUU Alternative I–3 may produce more socioeconomic benefits than IUU Alternative I–2. Likewise for the bycatch alternatives, Alternative B–3 may produce more benefits than Alternative B–2. Due to the consultative nature of this rulemaking, it may be possible for the costs to U.S. businesses to be ameliorated by new port state controls, substituting different transportation modes, or substituting different products all together. As a result, it is difficult to know if costs will also be higher moving from the less restrictive IUU Alternative I–2 or bycatch Alternative B–2 to IUU Alternative I–3 or bycatch Alternative B–3. Because Alternatives I–2 and B–2 most closely mirror the text of the Moratorium Protection Act, NMFS has decided to implement them in this final rule.

Pursuant to 5 U.S.C 553(d)(3), NOAA finds that there is good cause to waive the 30-day delay in the effective date of this rule. This rule is procedural in nature: It only creates procedures for the agency to follow when determining identification and certification of nations whose fishing vessels are engaged in IUU fishing and/or bycatch of PLMRs. Importantly, the rule does not modify, add, or revoke any existing rights and obligations of the public or any private parties, because the rule only applies to NOAA. Accordingly, NOAA finds that there is good cause, within the meaning of 5 U.S.C. 553(d)(3) and in accordance with the Congressional Review Act, 5 U.S.C. 808(2), to waive the 30-day delay in effectiveness of this rule and to make this rule effective immediately.

This final rule contains collection-of-information requirements for §§ 300.205(b)(2), 300.206(c), and 300.207(c) subject to review and

approval by OMB under the Paperwork Reduction Act (PRA). However, NMFS is delaying the effective date of these sections until NMFS receives OMB approval for these collections. After OMB approval is received, NMFS will publish the effective date for these sections in the **Federal Register.**

List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Antarctica, Canada, Exports, Fish, Fisheries, Fishing, Imports, Indians, Labeling, Marine resources, Reporting and recordkeeping requirements, Russian Federation, Transportation, Treaties, Wildlife.

Dated: January 7, 2011.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

■ For the reasons set out in the preamble, NMFS amends 50 CFR part 300 as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

■ 1. Subpart N is revised to read as follows:

Subpart N—Identification and Certification of Nations

Sec.

Authority: 16 U.S.C. 1826d *et seq.*

Subpart N—Identification and Certification of Nations

§ 300.200 Purpose and scope.

The purpose of this subpart is to implement the requirements in the High Seas Driftnet Fishing Moratorium Protection Act ("Moratorium Protection Act") to identify and certify nations whose vessels are engaged in illegal, unreported, or unregulated fishing or whose fishing activities result in bycatch of protected living marine resources. This language applies to vessels entitled to fly the flag of the nation in question. Identified nations that do not receive a positive certification may be subject to trade restrictive measures for certain fishery products. The Moratorium Protection Act also authorizes cooperation and assistance to nations that are taking action to combat illegal, unreported, or unregulated fishing or reduce bycatch of protected living marine resources.

§ 300.201 Definitions.

For the purposes of the Moratorium Protection Act:

Bycatch means: the incidental or discarded catch of protected living marine resources or entanglement of such resources with fishing gear.

Fishing vessel means: any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for—

(1) Fishing; or

(2) Any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing, bunkering or purchasing catch, or aiding or assisting one or more vessels at sea in the performance of such activity.

Illegal, unreported, or unregulated (IUU) fishing means:

(1) Fishing activities that violate conservation and management measures required under an international fishery management agreement to which the United States is a party, including but not limited to catch limits or quotas, capacity restrictions, and bycatch reduction requirements;

(2) Overfishing of fish stocks shared by the United States, for which there are no applicable international conservation or management measures or in areas with no applicable international fishery management organization or agreement, that has adverse impacts on such stocks; or,

(3) Fishing activity that has a significant adverse impact on seamounts, hydrothermal vents, cold water corals and other vulnerable marine ecosystems located beyond any national jurisdiction, for which there are no applicable conservation or management measures, including those in areas with no applicable international fishery management organization or agreement.

International agreement means: an agreement between two or more States, agencies of two or more States, or intergovernmental organizations which is legally binding and governed by international law.

International fishery management agreement means: any bilateral or multilateral treaty, convention, or agreement for the conservation and management of fish.

International fishery management organization means: an international organization established by any bilateral or multilateral treaty, convention, or agreement for the conservation and management of fish.

Protected living marine resources (PLMRs) means: non-target fish, sea turtles, or marine mammals that are protected under United States law or international agreement, including the Marine Mammal Protection Act, the Endangered Species Act, the Shark Finning Prohibition Act, and the Convention on International Trade in Endangered Species of Wild Flora and Fauna; but they do not include species, except sharks, that are managed under the Magnuson-Stevens Fishery Conservation and Management Act, the Atlantic Tunas Convention Act, or by any international fishery management agreement.

§ 300.202 Identification and certification of nations engaged in illegal, unreported, or unregulated fishing activities.

(a) *Procedures to identify nations whose fishing vessels are engaged in IUU fishing*—(1) NMFS will identify and list, in a biennial report to Congress, nations whose fishing vessels are engaged, or have been engaged at any point during the preceding two years, in IUU fishing.

(2) When determining whether to identify a nation as having fishing vessels engaged in IUU fishing, NMFS will take into account all relevant matters, including but not limited to the history, nature, circumstances, extent, duration, and gravity of the IUU fishing activity in question, and any measures that the nation has implemented to address the IUU fishing activity. NMFS will also take into account whether an international fishery management organization exists with a mandate to regulate the fishery in which the IUU activity in question takes place. If such an organization exists, NMFS will consider whether the relevant international fishery management organization has adopted measures that are effective at addressing the IUU fishing activity in question and, if the nation whose fishing vessels are engaged, or have been engaged, in IUU fishing is a party to, or maintains cooperating status with, the organization.

(b) *Notification of nations identified as having fishing vessels engaged in IUU fishing.* Upon identifying a nation whose vessels have been engaged in IUU fishing activities in the biennial report to Congress, the Secretary of Commerce will notify the President of such identification. Within 60 days after submission of the biennial report to Congress, the Secretary of Commerce,

acting through or in consultation with the Secretary of State, will:

(1) Notify nations that have been identified in the biennial report as having fishing vessels that are currently engaged, or were engaged at any point during the preceding two calendar years, in IUU fishing activities;

(2) Notify identified nations of the requirements under the Moratorium Protection Act and this subpart; and

(3) Notify any relevant international fishery management organization of actions taken by the United States to identify nations whose fishing vessels are engaged in IUU fishing and initiate consultations with such nations.

(c) *Consultation with nations identified as having fishing vessels engaged in IUU fishing.* Within 60 days after submission of the biennial report to Congress, the Secretary of Commerce, acting through or in cooperation with the Secretary of State, will initiate consultations with nations that have been identified in the biennial report for the purpose of encouraging such nations to take appropriate corrective action with respect to the IUU fishing activities described in the biennial report.

(d) *Procedures to certify nations identified as having fishing vessels engaged in IUU fishing.* Each nation that is identified as having fishing vessels engaged in IUU fishing shall receive either a positive or a negative certification from the Secretary of Commerce, and this certification will be published in the biennial report to Congress. A positive certification indicates that a nation has taken appropriate corrective action to address the IUU fishing activity described in the biennial report. A negative certification indicates that a nation has not taken appropriate corrective action.

(1) The Secretary of Commerce shall issue a positive certification to an identified nation upon making a determination that such nation has taken appropriate corrective action to address the activities for which such nation has been identified in the biennial report to Congress. When making such determination, the Secretary shall take into account the following:

(i) Whether the government of the nation identified pursuant to paragraph (a) of this section has provided evidence documenting that it has taken corrective action to address the IUU fishing activity described in the biennial report; or

(ii) Whether the relevant international fishery management organization has adopted and, if applicable, the identified member nation has implemented and is enforcing, measures to effectively address the IUU fishing activity of the identified nation's fishing vessels described in the biennial report.

(2) Prior to a formal certification determination, nations will be provided with preliminary certification determinations and an opportunity to support and/or refute the preliminary determinations and communicate any corrective actions taken to address the activities for which such nations were identified. The Secretary of Commerce shall consider any information received during the course of these consultations when making the subsequent certification determinations.

§ 300.203 Identification and certification of nations engaged in bycatch of protected living marine resources.

(a) *Procedures to identify nations whose fishing vessels are engaged in PLMR bycatch*—(1) NMFS will identify and list, in the biennial report to Congress, nations whose fishing vessels are engaged, or have been engaged during the preceding calendar year prior to publication of the biennial report to Congress, in fishing activities or practices either in waters beyond any national jurisdiction that result in bycatch of a PLMR, or in waters beyond the U.S. EEZ that result in bycatch of a PLMR that is shared by the United States. When determining whether to identify nations as having fishing vessels engaged in PLMR bycatch, NMFS will take into account all relevant matters including, but not limited to, the history, nature, circumstances, extent, duration, and gravity of the bycatch activity in question.

(2) NMFS will also examine whether there is an international organization with jurisdiction over the conservation and protection of the relevant PLMRs or a relevant international or regional fishery organization. If such organization exists, NMFS will examine whether the organization has adopted measures to effectively end or reduce bycatch of such species; and if the nation whose fishing vessels are engaged, or have been engaged during the preceding calendar year prior to publication of the biennial report to Congress, in bycatch of PLMRs is a party to or maintains cooperating status with the relevant international organization.

(3) NMFS will also examine whether the nation has implemented measures designed to end or reduce such bycatch that are comparable in effectiveness to U.S. regulatory requirements. In considering whether a nation has implemented measures that are comparable in effectiveness to those of the United States, NMFS will evaluate if different conditions exist that could bear on the feasibility and efficiency of such measures to end or reduce bycatch of the pertinent PLMRs.

(b) *Notification of nations identified as having fishing vessels engaged in PLMR bycatch.* Upon identifying a nation whose vessels have been engaged in bycatch of PLMRs in the biennial report to Congress, the Secretary of Commerce will notify the President of such identification. Within 60 days after submission of the biennial report to Congress, the Secretary of Commerce, acting through or in consultation with the Secretary of State, will notify identified nations about the requirements under the Moratorium Protection Act and this subpart.

(c) *Consultations and negotiations.* Upon submission of the biennial report to Congress, the Secretary of Commerce, acting through or in consultation with the Secretary of State, will:

(1) Initiate consultations within 60 days after submission of the biennial report to Congress with the governments of identified nations for the purposes of entering into bilateral and multilateral treaties with such nations to protect the PLMRs from bycatch activities described in the biennial report; and

(2) Seek agreements through the appropriate international organizations calling for international restrictions on the fishing activities or practices described in the biennial report that result in bycatch of PLMRs and, as necessary, request the Secretary of State to initiate the amendment of any existing international treaty to which the United States is a party for the protection and conservation of the PLMRs in question to make such agreements consistent with this subpart.

(d) *International Cooperation and Assistance.* To the greatest extent possible, consistent with existing authority and the availability of funds, the Secretary shall:

(1) Provide appropriate assistance to nations identified by the Secretary under paragraph (a) of this section and international organizations of which those nations are members to assist those nations in qualifying for a positive certification under paragraph(e) of this section;

(2) Undertake, where appropriate, cooperative research activities on species assessments and improved bycatch mitigation techniques, with those nations or organizations;

(3) Encourage and facilitate the transfer of appropriate technology to those nations or organizations to assist those nations in qualifying for positive certification under paragraph (e) of this section; and

(4) Provide assistance to those nations or organizations in designing and implementing appropriate fish harvesting plans.

(e) *Procedures to certify nations identified as having fishing vessels engaged in PLMR bycatch*—(1) Each nation that is identified as having fishing vessels engaged in PLMR bycatch shall receive either a positive or a negative certification from the Secretary of Commerce, and this certification will be published in the biennial report to Congress. The Secretary of Commerce shall issue a positive certification to an identified nation upon making a determination that:

(i) Such nation has provided evidence documenting its adoption of a regulatory program to end or reduce bycatch of such PLMRs that is comparable in effectiveness to regulatory measures required under U.S. law to address bycatch in the relevant fisheries, taking into account different conditions that could bear on the feasibility and efficacy of these measures, and which, in the case of an identified nation with fishing vessels engaged in pelagic longline fishing, includes the mandatory use of circle hooks, careful handling and release equipment, training and observer programs; and

(ii) Such nation has established a management plan that will assist in the collection of species-specific data on PLMR bycatch to support international stock assessments and conservation efforts for PLMRs.

(2) Nations will be notified prior to a formal certification determination and will be provided with an opportunity to support and/or refute preliminary certification determinations, and communicate any corrective actions taken to address the activities for which such nations were identified. The Secretary of Commerce shall consider any information received during the course of these consultations when making the subsequent certification determinations.

§ 300.204 Effect of certification.

(a) If an identified nation does not receive a positive certification under this subpart (*i.e.*, the nation receives a negative certification or no certification is made), the fishing vessels of such nation are, to the extent consistent with international law, subject to the denial of entry into any place in the United States and to the navigable waters of the United States.

(b) At the recommendation of the Secretary of Commerce (*see* § 300.205), certain fish or fish products from such nation may be subject to import prohibitions.

(c) Any action recommended under this paragraph (c) shall be consistent with international obligations, including the WTO Agreement.

(d) If certain fish or fish products are prohibited from entering the United States, within six months after the imposition of the prohibition, the Secretary of Commerce shall determine whether the prohibition is insufficient to cause that nation to effectively address the IUU fishing described in the biennial report, or that nation has retaliated against the United States as a result of that prohibition. The Secretary of Commerce shall certify to the President each affirmative determination that an import prohibition is insufficient to cause a nation to effectively address such IUU fishing activity or that a nation has taken retaliatory action against the United States. This certification is deemed to be a certification under section 1978(a) of Title 22, which provides that the President may direct the Secretary of the Treasury to prohibit the bringing or the importation into the United States of any products from the offending country for any duration as the President determines appropriate and to the extent that such prohibition is sanctioned by the World Trade Organization.

(e) *Duration of certification.* Any nation identified in the biennial report to Congress and negatively certified will remain negatively certified until the Secretary of Commerce determines that the nation has taken appropriate corrective action to address the IUU fishing activity and/or bycatch of PLMRs for which it was identified in the biennial report. Receipt of a positive certification determination will demonstrate that appropriate corrective action has been taken by a nation to address the relevant IUU fishing activity and/or bycatch of PLMRs.

(f) *Consultations.* NMFS will, working through or in consultation with the Department of State, continue consultations with nations that receive a negative certification with respect to the IUU fishing activities or bycatch of PLMRs described in the biennial report to Congress. The Secretary of Commerce shall take the results of such consultations into consideration when making a subsequent certification determination for such nation.

§ 300.205 Denial of port privileges and import restrictions on fish or fish products.

(a) *Scope of Applicability*—(1) If a nation identified in the biennial report under § 300.202(a) or § 300.203(a) is not positively certified by the Secretary of Commerce, and fishing vessels of the nation are allowed entry to any place in the United States and to the navigable waters of the United States under this subpart, those vessels will be subject to inspection and may be prohibited from landing, processing, or transshipping fish and fish products. Services, including the refueling and re-supplying of such fishing vessels, may be prohibited, with the exception of services essential to the safety, health, and welfare of the crew. Fishing vessels will not be denied port access or services in cases of force majeure or distress.

(2) For nations identified in the biennial report under § 300.202(a) that are not positively certified, the Secretary of Commerce shall recommend import prohibitions with respect to fish or fish products from those nations. Such recommendations on import prohibitions would not apply to fish or fish products not managed under an applicable international fishery agreement, or if there is no applicable international fishery agreement, to the extent that such provisions would apply to fish or fish products caught by vessels not engaged in illegal, unreported, or unregulated fishing. For nations identified under § 300.203(a) that are not positively certified, the Secretary of Commerce shall also recommend import prohibitions; such prohibitions shall not apply to fish or fish products not caught by the vessels engaged in the relevant activity for which the nation was identified.

(3) Any action recommended under this paragraph (a)(3) shall be consistent with international obligations, including the WTO Agreement.

(b) *Imposition of import restrictions*—(1) *Notification.* Where the Secretary of Commerce cannot make positive certifications for identified nations, and the President determines that certain fish and fish products from such nations are ineligible for entry into the United States and U.S. territories, the Secretary of Commerce, with the concurrence of the Secretary of State and in cooperation with the Secretary of Treasury, will file a notice with the Office of the Federal Register.

(2) *Documentation of admissibility.* If certain fish or fish products are subject to import prohibitions, NMFS may publish in the **Federal Register** the requirement that other fish or fish products from the relevant nation that are not subject to the prohibitions be accompanied by documentation of admissibility. The documentation of admissibility must be executed by a duly authorized official of the identified

nation and validated by a responsible official(s) designated by NMFS. The documentation must be executed and submitted in a format (electronic facsimile (fax), the Internet, *etc.*) specified by NMFS.

(3) *Effective date of import restrictions.* Effective upon the date of publication of such finding, shipments of fish or fish products found to be ineligible will be denied entry to the United States. Entry will not be denied for any such shipment that, on the date of publication, was in transit to the United States.

(4) *Removal of negative certifications and import restrictions.* Upon a determination by the Secretary of Commerce that an identified nation that was not certified positively has satisfactorily met the conditions in this subpart and that nation has been positively certified, the provisions of § 300.205 shall no longer apply. The Secretary of Commerce, with the concurrence of the Secretary of State and in cooperation with the Secretary of Treasury, will notify such nations and will file with the Office of the Federal Register for publication notification of the removal of the import restrictions effective on the date of publication.

§ 300.206 Alternative procedures for IUU fishing activities.

(a) These certification procedures may be applied to fish or fish products from a vessel of a harvesting nation that has been identified under § 300.202 in the event that the Secretary cannot reach a certification determination for that nation by the time of the next biennial report. These procedures shall not apply to fish or fish products from identified nations that have received either a negative or a positive certification under this subpart.

(b) Consistent with paragraph (a) of this section, the Secretary of Commerce may allow entry of fish or fish products on a shipment-by-shipment, shipper-by-shipper, or other basis if the Secretary determines that:

(1) The vessel has not engaged in IUU fishing under an international fishery management agreement to which the U.S. is a party; or

(2) The vessel is not identified by an international fishery management organization as participating in IUU fishing activities.

(c) Fish or fish products offered for entry under this paragraph (c) must be accompanied by a completed documentation of admissibility available from NMFS. The documentation of admissibility must be executed by a duly authorized official of the identified nation and must be validated by a responsible official(s) designated by NMFS. The documentation must be executed and submitted in a format (electronic facsimile (fax), the Internet, etc.) specified by NMFS.

§ 300.207 Alternative procedures for bycatch of PLMRs.

(a) These certification procedures may be applied to fish or fish products from a vessel of a harvesting nation that has been identified under § 300.203 in the event that the Secretary cannot reach a certification determination for that nation by the time of the next biennial report. These procedures shall not apply to fish or fish products from identified nations that have received either a negative or a positive certification under this subpart.

(b) Consistent with paragraph (a) of this section, the Secretary of Commerce may allow entry of fish or fish products on a shipment-by-shipment, shipper-by-shipper, or other basis if the Secretary determines that imports were harvested by practices that do not result in bycatch of a protected marine species, or were harvested by practices that—

(1) Are comparable to those of the United States, taking into account different conditions, and which, in the case of pelagic longline fisheries, the regulatory program of an identified nation includes mandatory use of circle hooks, careful handling and release equipment, and training and observer programs; and

(2) Include the gathering of species specific data that can be used to support international and regional assessments and conservation efforts for protected living marine resources.

(c) Fish or fish products offered for entry under this section must be accompanied by a completed documentation of admissibility available from NMFS. The documentation of admissibility must be executed by a duly authorized official of the identified nation and validated by a responsible official(s) designated by NMFS. The documentation must be executed and submitted in a format (electronic facsimile (fax), the Internet, *etc.*) specified by NMFS.

[FR Doc. 2011–507 Filed 1–11–11; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 101006495–0498–01]

RIN 0648–BA31

Fisheries of the Exclusive Economic Zone Off Alaska; Steller Sea Lion Protection Measures for the Bering Sea and Aleutian Islands Groundfish Fisheries Off Alaska

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

ACTION: Interim final rule, extension of comment period.

SUMMARY: NMFS published an interim final rule on December 13, 2010, to implement Steller sea lion protection measures to ensure that the Bering Sea and Aleutian Islands management area groundfish fisheries off Alaska are not likely to jeopardize the continued existence of the western distinct population segment of Steller sea lions or adversely modify its designated critical habitat. A notice correcting errors identified in the preamble to the interim final rule and in the regulatory text was published on December 29, 2010. The public comment period for the interim final rule ends on January 12, 2011. NMFS has decided to extend the public comment period for an additional 45 days, to February 28, 2011, to provide adequate time for various stakeholders and other members of the public to submit comments.

DATES: The public comment period for this action has been extended for an additional 45 days, to February 28, 2011. Comments must be received no later than February 28, 2011.

ADDRESSES: Send comments to Dr. James W. Balsiger, Administrator, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by RIN 0648–BA31, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal at *http://www.regulations.gov.*
- *Mail:* P.O. Box 21668, Juneau, AK 99802.
- *Fax:* (907) 586–7557.
- *Hand delivery to the Federal Building:* 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record. No comments will be posted to *http://www.regulations.gov* for

public viewing until after the comment period has closed. Comments will generally be posted without change. All Personal Identifying Information (for example, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this action rule may be submitted to NMFS, e-mailed to *OIRA_Submission@omb.eop.gov*, or faxed to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Melanie Brown, (907) 586–7228.

SUPPLEMENTARY INFORMATION: An interim final rule was published in the **Federal Register** on December 13, 2010 (75 FR 77535), to implement Steller sea lion protection measures to ensure that the Bering Sea and Aleutian Islands management area groundfish fisheries off Alaska are not likely to jeopardize the continued existence of the western distinct population segment of Steller sea lions or adversely modify its designated critical habitat. A notice correcting one error in the preamble and one typographical error and content within the regulatory tables was published in the **Federal Register** on December 29, 2010 (75 FR 53272).

The public comment period for the interim final rule ends on January 12, 2011. The comment period occurred over the Christmas and New Year holidays, limiting the number of work days available to the public for developing a response to this action. Due to the public concern regarding this action, NMFS extends the public comment period for an additional 45 days, to end on February 28, 2011. The extension of the comment period ensures that NMFS provides adequate time for various stakeholders and other members of the public to comment on the interim final rule for the revised Steller sea lion protection measures.

Authority: 16 U.S.C. 773 *et seq.;* 1801 *et seq.;* 3631 *et seq.;* Pub. L. 108–447.

Dated: January 7, 2011.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–531 Filed 1–11–11; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 76, No. 8
Wednesday, January 12, 2011

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

SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

RIN 3245–AF86

Small Business Investment Companies—Energy Saving Qualified Investments

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: In this proposed rule, the U.S. Small Business Administration (SBA) is setting forth the new defined terms, "Energy Saving Qualified Investment" and "Energy Saving Activities", for the Small Business Investment Company (SBIC) Program. The new definitions are being established to facilitate implementation of a provision of the Energy Independence and Security Act of 2007 (Energy Act), which allows an SBIC making an "energy saving qualified investment" to obtain SBA leverage by issuing a deferred interest "energy saving debenture". This rule would also implement a provision of the Energy Act that provides access to additional SBA leverage for SBICs that have made Energy Saving Qualified Investments in Smaller Enterprises, as defined in SBA regulations.

DATES: Comments must be received on or before February 11, 2011.

ADDRESSES: You may submit comments, identified by RIN 3245–AF 86, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail, Hand Delivery/Courier:* Sean Greene, Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

SBA will post comments on *http://www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *http://www.regulations.gov,* please submit the information to Carol Fendler, Investment Division, 409 Third Street, SW., Washington, DC 20416. Highlight the information that you consider to be CBI and explain why you believe this information should be held confidential. SBA will review the information and make the final determination of whether it will publish the information or not.

FOR FURTHER INFORMATION CONTACT: Carol Fendler, Investment Division, Office of Capital Access, (202) 205–7559 or *sbic@sba.gov.*

SUPPLEMENTARY INFORMATION:

I. Background Information

The Energy Independence and Security Act of 2007, Public Law 110–140, Title XII, section 1205(a), amended section 303 of the Small Business Investment Act of 1958 (SBI Act) by authorizing SBICs licensed after September 30, 2008, to issue energy saving debentures. Section 1205(b) of the Energy Act amended section 103 of the SBI Act by adding the new defined terms "energy saving debenture" and "energy saving qualified investment." Section 1206 of the Energy Act amended section 303(b)(2) of the SBI Act to make SBICs licensed after September 30, 2008, eligible for additional leverage if they have made energy saving qualified investments. An SBIC making maximum use of this provision could have approximately 11% more leverage outstanding than would be permitted under the standard leverage eligibility formula.

II. Section by Section Analysis

Section 107.50—Definitions. The Energy Act provides that energy saving debentures are to be issued at a discount, have a 5-year or 10-year maturity, and require no interest payment or annual charge for the first five years. Although an SBIC can use other funds to make an energy saving qualified investment, an SBIC that issues an Energy Saving Debenture must use the proceeds only to make an energy saving qualified investment. To implement these new statutory provisions, SBA proposes to add "Energy Saving Qualified Investment" and "Energy Saving Activities" as defined terms in § 107.50.

"Energy Saving Qualified Investment"

The proposed regulatory definition of Energy Saving Qualified Investment has several key points. First, as specified in the statute, an Energy Saving Qualified Investment can only be made by an SBIC licensed after September 30, 2008. Second, the investment must be made in a Small Business, as defined in 13 CFR part 107. Third, the investment must be in the form of a Loan, a Debt Security (a debt instrument that includes an equity feature, such as warrants or rights to convert to equity), or an Equity Security. Fourth, the Small Business must be "primarily engaged" in business activities that reduce the use or consumption of non-renewable energy sources ("Energy Saving Activities").

"Energy Saving Activities"

The proposed rule defines Energy Saving Activities primarily by reference to various criteria established by the Department of Energy and other Federal agencies to identify energy efficient products and services and to encourage the provision of renewable energy sources. As one example, the manufacturing of products that satisfy the criteria for use of the Energy Star trademark label would qualify as an Energy Saving Activity. For each type of Energy Saving Activity, the proposed rule provides a reference to the appropriate Federal program or Internal Revenue Code section, or a detailed definition that would allow users to determine whether the manufacture or development of a specific product, or the provision of a specific service, qualifies under the definition. SBA believes that reference wherever possible to existing standards for energy efficient products and services will ensure that Energy Saving Qualified Investments satisfy the objectives of the Energy Act. This approach will also allow the definition of Energy Saving Activities to be more easily updated as energy efficiency standards expand to include new products and services.

In addition, paragraph (4) of the definition would allow SBA to determine whether activities not specifically addressed in the proposed rule are Energy Saving Activities. This approach will provide flexibility to accommodate activities based on technologies or practices that may emerge in the future. Paragraph (4) encompasses the manufacturing of products, provision of services, and conduct of research and development activities that reduce (or are anticipated to reduce) the consumption of non-

renewable energy, either through the more efficient use of such energy or by providing energy from renewable sources. An SBIC requesting a determination by SBA under paragraph (4) will be asked to submit written information and certifications (see also the discussion of proposed § 107.610 in this preamble). The proposed definition identifies the information required to be submitted and the factors that SBA will take into account in determining whether activities are Energy Saving Activities, although an SBIC would be free to provide other information to support its request. Ideally, the claimed energy savings will have been tested by an independent engineer or other recognized professional with expertise in the subject technology. The results of in-house or other non-independent testing may also be considered if the SBIC can document that tests were designed, performed and evaluated by qualified personnel following appropriate professional standards. SBA will also consider such factors as patents held by the Small Business, grants awarded by Federal or State government agencies, foundations, etc. to promote energy efficiency or energy savings, and licenses purchased by the Small Business to make use of energy-saving technologies developed by others. For research and development-stage companies that have not yet brought a product or service to market, SBA will consider projected energy savings, but the SBIC must also provide evidence supporting the feasibility and commercial potential of the products or services under development. Finally, SBA will consider whether an activity that would have been eligible for an energy-related Federal tax credit in past years should be considered an Energy Saving Activity, even though the subject credit is not currently available.

SBA welcomes comments regarding additional activities that may be candidates for inclusion in the Energy Saving Activities definition. For example, SBA is open to suggestions regarding activities that could reduce the consumption of non-renewable fuels by reducing the dependency on automobiles for transportation, such as provision of telework facilities, carpooling services, or improved transit options.

Electronic Access to Criteria for Evaluation of "Energy Saving Activities"

SBA intends to link its Investment Division Web site (*http://www.sba.gov/inv*) to other government Web sites that will assist users in determining whether a company providing or developing particular products or services is engaged in Energy Saving Activities. Some sites allow users to search for a specific product by name, while others provide performance criteria or outcomes that a qualifying product or service must satisfy. The current addresses for these sites are:

1. *Energy Star: http://www.energystar.gov/products*
2. *Federal Energy Management Program: www1.eere.energy.gov/femp/technologies/eep_purchasingspecs.html*
3. *Renewable Electricity Production Tax Credit (Internal Revenue Code Section 45): http://www.irs.gov/irb/2010–18_IRB/ar11.html*
4. *Energy Credit (Internal Revenue Code Section 48): http://frwebgate.access.gpo.gov/cgi-bin/usc.cgi?ACTION=RETRIEVE&FILE=$$xa$$busc26.wais&start=1688508&SIZE=98870&TYPE=PDF*
5. *Installation-related Federal Tax Credits for Consumer Energy Efficiency: http://www.energystar.gov/index.cfm?c=tax_credits.tx_index*

Determining Whether a Concern is "Primarily Engaged" in Energy Saving Activities

The proposed rule presumes that a company is "primarily engaged" in Energy Saving Activities if it derived at least 50% of its total revenues for its most recently completed fiscal year directly from Energy Saving Activities. However, SBA recognizes that one of the objectives of creating the Energy Saving debenture, which does not require the payment of interest during the first five years following issuance, may be to allow SBICs to invest in earlier stage enterprises that do not meet this revenue test for Energy Saving Activities. In some cases, small businesses may be engaged in research and development activities with little or no revenues. In other instances, a company may already have revenue from activities not related to Energy Saving Activities, but may be heavily engaged in activities that are expected to produce revenue from Energy Saving Activities in the future. Therefore, the proposed rule would allow SBA to determine that a small business is primarily engaged in Energy Saving Activities based on the totality of the circumstances, as evidenced by such factors as the distribution of the company's revenues; the percentage of total employees engaged in Energy Saving Activities; the expenditures (which may include both amounts expensed and amounts capitalized) allocated to Energy Saving Activities; activities related to the development and use of intellectual property held by the company related to Energy Saving Activities; and Energy Saving Activities contemplated by a business plan presented to outside investors as part of a formal fund-raising effort.

Energy Saving Debenture

As provided in section 1205(b) of the Energy Act, the energy saving debenture would be a five- or ten-year debenture issued at a discount so as to be, in effect, a "zero coupon" debenture for the first five years. SBA leverage fees would be paid as required under current § 107.1130, except for the annual charge in § 107.1130(d) which would be deferred for the first five years and thereafter be payable semi-annually along with the debenture interest. For example, an SBIC issuing a $1,000,000 ten-year debenture with a combined interest rate and annual charge of 6% would receive roughly $750,000 upon issuance and would make no payments of interest or annual charge for the first five years. Starting with the sixth year, the SBIC would make semi-annual payments of interest and charges on the debenture's face amount of $1,000,000. At maturity the SBIC would pay the $1,000,000 face amount of the debenture.

Each SBIC that was licensed after September 30, 2008, and is eligible to issue debentures under current regulations would be eligible to issue an energy saving debenture for the purpose of making an Energy Saving Qualified Investment. No regulatory changes are necessary to implement this new type of debenture.

Section 107.610—Required Certifications for Loans and Investments. An SBIC that intends to issue energy saving debentures based on its Energy Saving Qualified Investments or that intends to seek additional leverage based on its Energy Saving Qualified Investments in Smaller Enterprises must have an appropriate certification for each such investment. Proposed § 107.610(f) makes a distinction between investments for which SBA needs to make a pre-financing determination of eligibility and those for which it does not. If the small business concern is engaged in activities that are specifically included in the Energy Saving Activities definition, and it is presumed to be "primarily engaged" in those activities based on the source of its revenues, the SBIC only needs to certify the basis for the concern's eligibility and retain the certification and supporting documentation in its files. If SBA must make a pre-financing determination as to whether the concern is engaged in Energy Saving Activities and/or whether it is "primarily engaged" in such

activities, the proposed rule would require the SBIC to provide SBA with all available information from the concern that is relevant to those determinations, along with certifications by the SBIC and the concern that the submitted information is true and correct. SBA recognizes the burden that may be inherent in this type of "total facts and circumstances" determination, but believes it is preferable to offer this option to SBICs rather than to define Energy Saving Qualified Investments more narrowly.

Section 107.1150—Maximum Amount of Leverage for a Section 301(c) Licensee. New paragraph (d) implements a provision of the Energy Act that may provide additional leverage eligibility to SBICs licensed on or after October 1, 2008, that make Energy Saving Qualified Investments in Smaller Enterprises. This paragraph adjusts the leverage eligibility formula in § 107.1150(a) by subtracting from an SBIC's outstanding leverage the cost basis of Energy Saving Qualified Investments that the SBIC has made in Smaller Enterprises. The amount that can be subtracted is limited to 33% of the SBIC's Leverageable Capital. Furthermore, as required by the Energy Act, only the cost basis of Energy Saving Qualified Investments that individually do not exceed 20% of the SBIC's Regulatory Capital may be subtracted, even though SBICs in general can invest up to 30% of their Regulatory Capital in a single company.

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 has determined that this rule is a "significant" regulatory action under Executive Order 12866. The Regulatory Impact Analysis is set forth below.

1. Necessity of Regulation

This proposed regulatory action would implement sections 1205 and 1206 of the Energy Independence and Security Act of 2007, Public Law 110–140. The statutory revisions provide an SBIC seeking to make an "energy saving qualified investment" with a new SBA leverage option in the form of an "energy saving debenture."

2. Alternative Approaches to Regulation

Because the regulatory definition of Energy Saving Qualified Investment must be consistent with the statutory definition, SBA had a limited ability to consider alternatives. The statute defines "energy saving qualified investment" as an "investment in a small business concern that is primarily engaged in researching, manufacturing, developing, or providing products, goods, or services that reduce the use or consumption of non-renewable energy resources." The SBA considered adopting this statutory definition without modification. However, SBA did not select this approach due to concerns that without some interpretation of the broad statutory language, it would be difficult to evaluate (a) whether qualifying investments would actually contribute to the energy-saving objectives of the statute and (b) what constitutes "primarily engaged".

In considering alternatives for determining whether a qualifying investment would likely contribute to the energy-saving objectives of the statute, the SBA conferred with the Department of Energy (DOE) to consider two options besides using the broad statutory definition: (1) Defining a list of specific industries and (2) referencing existing standards developed for Federal programs that promote energy efficiency. SBA did not adopt the first option to identify a list of specific industries because (1) "energy saving" efforts take place across a broad spectrum of industries; (2) the North American Industrial Classification System (NAICS) codes, typically used to identify industries, are inadequate for capturing whether a business is involved in "energy saving" across this spectrum; and (3) developing a static list does not adequately allow for either a full range of products and services or the rapid growth in this area that might further the statutory goals. Given the number of Federal programs already directed towards "energy saving" activities, SBA chose to adopt the second option in order to improve standardization across agencies, allow growth as DOE and other agencies update program standards to reflect new "energy saving" initiatives, and to address the broadest spectrum of products and services. Towards those goals, SBA recognizes that SBICs may wish to invest in Small Businesses that are manufacturing or researching products or performing services that have not been identified by existing Federal standards. Therefore, SBA will also consider other investments on a case by case basis, based on the SBIC's ability to demonstrate energy savings associated with the Small Business's activities.

To determine whether a concern is "primarily engaged" in Energy Saving Activities, SBA considered using either a specific quantitative standard or an evaluation based on total facts and circumstances. For simplicity, the proposed rule presumes that a business is "primarily engaged" if it derived at least 50% of revenues during its most recently completed fiscal year from Energy Saving Activities. SBA also considered a higher percentage requirement, but chose 50% to encourage energy-saving investments as much as possible while meeting statutory requirements. Alternatively, an SBIC may ask SBA to determine whether a concern is "primarily engaged" in Energy Saving Activities based on an evaluation of various factors. As stated in the proposed definition of Energy Saving Qualified Investments, these factors include "the distribution of revenues, employees and expenditures, intellectual property rights held, and business plans presented to investors as part of a formal solicitation". SBA believes the combination of these two approaches provides a reasonable balance between simplicity and inclusiveness.

3. Potential Benefits and Costs

SBA anticipates that this rule will provide marginal benefit to small businesses seeking investments by SBICs under those circumstances in which the investment structure does not lend itself well to SBA's standard debenture. Standard debentures require the SBIC to make semi-annual interest payments, while the energy saving debenture contemplated by the statute would be issued at a discount, have a 5-year or 10-year maturity, and require no interest payment or annual charge for the first five years. This structure is the same as the SBIC program's currently available low and moderate income (LMI) debenture.

Since the structure of the energy saving debenture mirrors that of the LMI debenture, in determining this rule's benefit to both SBICs and small businesses, SBA analyzed the impact of the LMI debenture. The LMI debenture was first issued in FY 2001. Between FY 2001 and March 31, 2010, SBICs have issued approximately $4.2 billion in debentures, with less than $45 million in LMI debentures (approximately 1% of all debenture leverage issued since FY 2001). The proceeds of LMI debentures can only be used to make LMI financings; however, SBA estimates that only 2% of LMI financings by SBICs issuing debentures were funded using the LMI debenture. SBICs placed 21.5% of their investment dollars in portfolio companies in LMI zones between FY 2001 and July 31, 2010, compared with 21.6% in fiscal years

1998–2000 when the LMI debenture was not available. The structural similarities between the LMI debenture and the energy saving debenture suggest that this rule will have a similarly marginal impact.

In estimating the impact, the SBA also considered available industry data. The PricewaterhouseCoopers/National Venture Capital Association MoneyTree™ Report indicates that $1.9 billion in Cleantech investments were made in calendar year 2009, representing approximately 11% of all venture financings. SBA believes that Cleantech investments are fairly representative of energy saving investments. SBA estimates that the percentage of the SBIC portfolio directed towards Energy Saving Qualified Investments will be similar to the percentage of Cleantech investments in the venture industry. However, only SBICs licensed after September 30, 2008, will be eligible to issue energy saving debentures and many such SBICs will choose to use the standard debenture to make these types of financings. Therefore, the SBA estimates that approximately half of the anticipated SBIC energy saving investments will be performed using the new energy saving debenture or 5% of all financings by SBICs issuing debentures. In FY 2009, SBICs issuing debentures provided $1.2 billion in financing to small businesses.

With respect to potential costs of the regulation to SBICs, the cost has been incorporated into the program formulation model which determines the annual fee to keep the debenture program to zero subsidy cost as required by law. Because the structure of the LMI debenture is the same as the energy saving debenture, SBA used its performance as a proxy for the energy saving debenture. SBA's estimate that energy saving debentures would constitute 5% of total demand for debenture leverage resulted in an increase to the annual fee of 14.3 basis points versus formulations with no energy saving debentures. This increase reflects the additional risk associated with underlying SBIC equity investments contemplated in the usage of this debenture. Despite this increase, the annual fee is estimated to remain substantially lower than the ten year average and far below the statutory maximum of 1.38%. It should be noted that if the energy saving debenture was formulated as a stand-alone program (apart from the standard debenture) it is likely that its annual fee would exceed the statutory maximum. SBA will review the demand for and performance of the energy saving debenture on an annual basis to determine if these assumptions should be changed. Should the actual or anticipated demand for the energy saving debenture exceed 5% of all debenture leverage issued in any given year, SBA will consider separately formulating the energy saving debenture as a separate program so that its higher cost would be borne directly by users rather than spread among all SBICs.

Executive Order 12988

This action meets applicable standards set forth in section 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 presumptive effect.

Executive Order 13132

The rule will not have substantial direct effects on the States, or the distribution of power and responsibilities among the various levels of government. Therefore, for the purposes of Executive Order 13132, Federalism, SBA determines that this proposed rule has no federalism implications warranting the preparation of a federalism assessment.

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

SBA has determined that this proposed rule imposes additional reporting and recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C., chapter 35. This collection of information includes three different reporting requirements: (1) Information needed for SBA to determine whether a Small Business is "primarily engaged" in Energy Saving Activities, (2) information needed for SBA to determine whether a particular activity is an "Energy Saving Activity", and (3) identification of a completed financing as an Energy Saving Qualified Investment on the Portfolio Financing Report. As a result of proposed changes in this rule, SBA will also amend an existing approved information collection, Portfolio Financing Report, SBA Form 1031 (OMB Control Number 3245–0078). The titles, descriptions and respondent descriptions of the information collections provisions are discussed below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

SBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of SBA's functions, including whether the information will have a practical utility; (2) the accuracy of SBA's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Please send comments by the closing date for comment for this proposed rule to Wendy Liberante, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503 and to Harry Haskins, Deputy Associate Administrator for Investment, Office of Investment, Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

A. "Primarily Engaged" and "Energy Saving Activity" Determinations

Title: Financing Eligibility Statement for Usage of Energy Saving Debentures [no SBA form number].

Summary: The Financing Eligibility Statement for Usage of Energy Saving Debentures will be used by SBICs requesting either or both of the SBA determinations that may be requested under the proposed rule: (1) Whether a Small Business is "primarily engaged" in Energy Saving Activities, as described in the proposed definition of "Energy Saving Qualified Investment" in § 107.50 and as used in § 107.610(f)(2)(i), and/or (2) whether a particular activity in which a Small Business is engaged is an "Energy Saving Activity", as described in the proposed definition of that term and as used in § 107.610(f)(2)(ii). The SBIC must provide supporting evidence of the Small Business's eligibility based on the factors listed in the proposed rule.

Need and Purpose: Section 1205 of the Energy Independence and Security Act of 2007 makes SBA leverage in the form of a deferred interest "energy saving debenture" available to SBICs licensed after September 30, 2008 for the purpose of making Energy Saving Qualified Investments. The proposed rule identifies various criteria under which a financing can qualify as an Energy Saving Qualified Investment; however, SBA recognizes that some proposed investments will need to be individually reviewed by SBA to determine whether they fulfill the energy saving objectives of the statute.

SBA will use the submitted information to make those determinations.

Description of Respondents: Small business investment companies will submit this form to obtain a determination from SBA as to whether a proposed financing is an Energy Saving Qualified Investment. There are approximately 300 active SBICs; only about 10% of these were licensed after September 30, 2008, and are eligible to issue energy saving debentures to make Energy Saving Qualified Investments. Based on anticipated new licensing activity, SBA is estimating the number of eligible SBICs at 60. Assuming each of these SBICs will invest in five companies per year, that 5% of all investments will be in energy-saving companies, and that one-third of those will require SBA to make a pre-financing determination of eligibility, SBA estimates five responses per year.

SBA estimates the burden of this collection of information as follows: An applicant will complete this collection once for each prospective Energy Saving Qualified Investment that requires SBA to make a pre-financing determination of eligibility. SBA estimates that the time needed to complete this collection will average 10 hours. SBA estimates that the cost to complete this collection will be approximately $150 per hour. Total estimated aggregate burden is 50 hours per annum costing a total of $7,500 for the year.

B. Portfolio Financing Report

Title: Portfolio Financing Report, SBA Form 1031 (OMB Control Number 3245–0078).

Summary: SBA Form 1031 is a currently approved information collection form. SBA regulations (§ 107.640) require SBICs to submit a Portfolio Financing Report on SBA Form 1031 for each financing that an SBIC provides to a small business concern. The form is SBA's primary source of information for compiling statistics on the SBIC program as a provider of capital to small businesses. SBA also uses the information provided on Form 1031 to evaluate SBIC compliance with regulatory requirements. SBA proposes to revise the form by adding one new question, which would ask the SBIC to use a pull-down menu to identify whether a completed financing was an Energy Saving Qualified Investment. SBA's financial reporting software would automatically transfer this designation to the SBA Form 468 (SBIC Financial Statements), the source of data needed to determine eligibility for additional leverage based on Energy Saving Qualified Investments under § 107.1150(d)(2)(i).

Need and Purpose: Section 1206 of the Energy Independence and Security Act of 2007 increases the maximum amount of leverage potentially available to an SBIC licensed on or after October 1, 2008, that makes Energy Saving Qualified Investments. Proposed § 107.1150(d) adjusts the basic leverage eligibility formula in § 107.1150(a) by subtracting from an SBIC's outstanding leverage the cost basis of Energy Saving Qualified Investments that the SBIC has made in Smaller Enterprises. The amount that can be subtracted is limited to 33% of the SBIC's Leverageable Capital. SBA will use the information submitted on Form 1031 to track Energy Saving Qualified Investments that an SBIC may use in its leverage eligibility calculation, as well as for overall program evaluation purposes.

Description of Respondents: All SBICs are currently required to submit SBA Form 1031 within 30 days after closing an investment. The current estimate of 3,700 responses per year is not affected by this proposed rule. SBA proposes to add a single additional field to the form to identify whether the investment is an Energy Saving Qualified Investment.

SBA estimates the burden of this collection of information as follows: An SBIC making an Energy Saving Qualified Investment will select that descriptor from a pull-down menu on SBA Form 1031. There is no incremental burden attributable to completion of this additional field. An SBIC will complete SBA Form 1031 for each of its completed financing transactions. The currently approved hour burden for this collection is 12 minutes per response (0.2 hours), at a cost of $5.00 per response (based on $25.00 per hour). The total estimated burden is 740 hours per annum at an aggregate cost of $18,500.

The recordkeeping requirements under the proposed rule relate to the information that an SBIC must maintain in its files to support the required certifications for Energy Saving Qualified Investments under § 107.610(f)(1). SBA expects that SBICs will be able to obtain the necessary documentation with minimal effort. The SBIC would first document that the contemplated investment is in a company that provides products or services included in the definition of Energy Saving Activities, generally by referring to one of the government web sites discussed in this preamble. Second, the SBIC would document that the company derives at least 50 percent of its revenues from the sales of these products or services; the company would have this information available in the ordinary course of business.

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

When an agency promulgates a rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) requires the agency to prepare an initial regulatory flexibility analysis (IRFA) which will describe the potential economic impact of the rule on small entities and alternatives that may minimize that impact. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an IRFA, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. This proposed rule affects all SBICs issuing debentures, of which there are approximately 160, most of which are small entities. Therefore, SBA has determined that this proposed rule will have an impact on a substantial number of small entities. However, SBA has determined that the impact on entities affected by the rule will not be significant. The energy saving qualified investment definition identifies the type of investment for which an SBIC will be permitted to seek SBA funding in the form of an "energy saving debenture"; this instrument, because of its deferred interest feature, is expected to provide SBICs with greater flexibility in structuring qualified investments. The energy saving debenture is expected to increase the annual fee charged on all new debenture commitments by approximately 14 basis points; however, the fee would continue to remain low by historical standards. Accordingly, the Administrator of the SBA hereby certifies that this rule will not have a significant impact on a substantial number of small entities. SBA welcomes comment from members of the public who believe there will be a significant impact either on SBICs, or on companies that receive funding from SBICs.

List of Subjects in 13 CFR Part 107

Investment companies, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons stated in the preamble, SBA proposes to amend part 107 of title 13 of the Code of Federal Regulations as follows:

PART 107—SMALL BUSINESS INVESTMENT COMPANIES

1. The authority citation for part 107 continues to read as follows:

Authority: 15 U.S.C. 681 *et seq.*, 683, 687(c), 687b, 687d, 687g, 687m and Pub. L.

106–554, 114 Stat. 2763; and Pub. L. 111–5, 123 Stat. 115.

2. Amend § 107.50 by adding definitions of "Energy Saving Activities" and "Energy Saving Qualified Investment", to read as follows:

§107.50 Definitions of terms.

* * * * *

Energy Saving Activities means any of the following:

(1) Manufacturing or research and development of products, integral product components, integral material, or related software that meet one or more of the following:

(i) Improves residential energy efficiency as demonstrated by meeting Department of Energy and Environmental Protection Agency criteria for use of the Energy Star trademark label;

(ii) Improves commercial energy efficiency as demonstrated by being in the upper 25% of efficiency for all similar products as designated by the Department of Energy's Federal Energy Management Program;

(iii) Improves automobile efficiency or reduces petroleum consumption through the use of advanced batteries, power electronics, or electric motors; advanced combustion engine technology; or advanced materials technologies, such as lightweighting;

(iv) Improves industrial energy efficiency through combined heat and power (CHP) prime mover or power generation technologies, heat recovery units, absorption chillers, desiccant dehumidifiers, packaged CHP systems, more efficient process heating equipment, more efficient steam generation equipment, or heat recovery steam generators for industrial application;

(v) Reduces the consumption of non-renewable energy by providing renewable energy sources, as demonstrated by meeting the standards, applicable to the year in which the investment is made, for receiving a Renewable Electricity Production Tax Credit as defined in Internal Revenue Code Section 45 or an Energy Credit as defined in Internal Revenue Code Section 48; or

(vi) Improves electricity delivery efficiency by supporting the smart grid functions as identified in 42 U.S.C. 17386(d) by delivering a product, service, or functionality that serves one or more of the following operational domains: equipment manufacturing, customer systems, advanced metering infrastructure, electric distribution systems, electric transmission systems, or grid cyber security.

(2) Installation and/or inspection services associated with the deployment of energy saving products as identified by meeting one or more of the following standards:

(i) Deploys products that qualify, in the year in which the investment is made, for installation-related Federal Tax Credits for Consumer Energy Efficiency;

(ii) Deploys products related to commercial energy efficiency as demonstrated by deploying commercial equipment that is in the upper 25% of efficiency for all similar products as designated by the Department of Energy's Federal Energy Management Program;

(iii) Deploys combined heat and power products, goods, or services;

(iv) Deploys products that qualify, in the year in which the investment is made, for receiving a Renewable Electricity Production Tax Credit as defined in Internal Revenue Code Section 45 or an Energy Credit as defined in Internal Revenue Code Section 48; or

(v) Deploys a product, service, or functionality that improves electricity delivery efficiency by supporting the smart grid functions as identified in 42 U.S.C. 17386(d) serving one or more of the following operational domains: equipment manufacturing, customer systems, advanced metering infrastructure, electric distribution systems, electric transmission systems, or grid cyber security.

(3) Auditing and/or consulting services performed with the objective of identifying potential improvements of the type described in paragraph (1) or (2) of this definition.

(4) Other manufacturing, service, or research and development activities that use less energy to provide the same level of energy service or reduce the consumption of non-renewable energy by providing renewable energy sources, as determined by SBA. A Licensee must obtain such determination in writing prior to providing Financing to a Small Business. SBA will consider factors including but not limited to:

(i) Results of energy efficiency testing performed in accordance with recognized professional standards, preferably by a qualified third-party professional, such as a certified energy assessor, energy auditor, or energy engineer;

(ii) Patents or grants awarded to or licenses held by the Small Business related to Energy Saving Activities listed in subsection (1) or (2) in this definition;

(iii) For research and development of products or services that are anticipated to reduce the consumption of non-renewable energy, written evidence from an independent certified third-party professional of the feasibility, commercial potential, and projected energy savings of such products or services;

(iv) Eligibility of the product or service for a Federal tax credit cited in this definition that is not available in the year in which the investment is made, but was available in a previous year.

Energy Saving Qualified Investment means a Financing which:

(1) Is made by a Licensee licensed after September 30, 2008;

(2) Is in the form of a Loan, Debt Security, or Equity Security, each as defined in this section; and

(3) Is made to a Small Business that is primarily engaged in Energy Saving Activities. A Small Business that derived at least 50% of its revenues during its most recently completed fiscal year from Energy Saving Activities is presumed to be primarily engaged in such activities. Alternatively, a Licensee licensed after September 30, 2008 may request a determination from SBA prior to the provision of Financing as to whether a Small Business is primarily engaged in Energy Saving Activities. SBA will consider the distribution of revenues, employees and expenditures, intellectual property rights held, and Energy Saving Activities described in a business plan presented to investors as part of a formal solicitation in making its determination.

* * * * *

3. Amend § 107.610 by revising the last sentence of the introductory text and adding paragraph (f) to read as follows:

§ 107.610 Required certifications for Loans and Investments.

* * * Except for information and documentation prepared under paragraph (f)(2) of this section, you must keep these documents in your files and make them available to SBA upon request.

* * * * *

(f) For each Energy Saving Qualified Investment:

(1) If a pre-Financing determination of eligibility by SBA is not required under the definition of Energy Saving Activities or Energy Saving Qualified Investment:

(i) A certification by you, dated as of the closing date of the Financing, as to the basis for the qualification of the Financing as an Energy Saving Qualified Investment; and

(ii) Supporting documentation of the Energy Saving Activities engaged in by

the concern and the percentage of its revenues derived from Energy Saving Activities during its most recently completed fiscal year.

(2) If a pre-Financing determination of eligibility by SBA is required under the definition of Energy Saving Activities or Energy Saving Qualified Investment:

(i) If the concern did not derive at least 50% of its revenues during its most recently completed fiscal year from Energy Saving Activities, submit to SBA in writing all available information concerning the factors considered under paragraph (3) of the definition of "Energy Saving Qualified Investment" in § 107.50, certified by both you and the concern to be true and correct to the best of your knowledge.

(ii) If you are requesting a determination by SBA that the activities in which the concern is primarily engaged are Energy Saving Activities, submit to SBA in writing a description of the product or service being provided or developed, including all available documentation of the energy savings produced or anticipated, addressing the factors considered under paragraph (4) of the definition of "Energy Saving Activities" in § 107.50 and certified by both you and the concern to be true and correct to the best of your knowledge.

4. Amend § 107.1150 by adding a sentence at the end of paragraph (c) introductory text and adding paragraph (d) to read as follows:

§ 107.1150 Maximum amount of Leverage for a Section 301(c) Licensee.

* * * * *

(c) * * * Any investment that you use as a basis to seek additional leverage under this paragraph (c) cannot also be used to seek additional leverage under paragraph (d) of this section.

* * * * *

(d) *Additional Leverage based on Energy Saving Qualified Investments in Smaller Enterprises.* (1) Subject to SBA's credit policies, if you were licensed on or after October 1, 2008, you may have outstanding Leverage in excess of the amounts permitted by paragraphs (a) and (b) of this section in accordance with this paragraph (d). Any investment that you use as a basis to seek additional Leverage under this paragraph (d) cannot also be used to seek additional Leverage under paragraph (c) of this section.

(2) To determine whether you may request a draw that would cause you to have outstanding Leverage in excess of the amount determined under paragraph (a) of this section:

(i) Determine the cost basis, as reported on your most recent filing of SBA Form 468, of any Energy Saving Qualified Investments in a Smaller Enterprise that individually do not exceed 20% of your Regulatory Capital.

(ii) Calculate the amount that equals 33% of your Leverageable Capital.

(iii) Subtract from your outstanding Leverage the lesser of (d)(1)(i) or (d)(1)(ii).

(iv) If the amount calculated in paragraph (d)(1)(iii) is less than the maximum Leverage determined under paragraph (a) of this section, the difference between the two amounts equals your additional Leverage availability.

Dated: January 6, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2011–486 Filed 1–11–11; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 17

[Docket No. FAA–2010–0840; Notice No. 10–18]

RIN 2120–AJ82

Procedures for Protests and Contracts Dispute

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action would update, simplify, and streamline the current regulations governing the procedures for bid protests brought against the FAA and contract disputes brought against or by the FAA. It would also add a voluntary dispute avoidance and early resolution process. This action is necessary to ensure the regulations reflect the changes that have evolved since 1999 when they were first implemented. The intended effect of this action is to streamline and further improve the protest and dispute process.

DATES: Send your comments on or before March 14, 2011.

ADDRESSES: You may send comments identified by Docket Number FAA–2010–0840 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

For more information on the rulemaking process, *see* the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketsInfo.dot.gov.*

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time and follow the online instructions for accessing the docket or Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Marie A. Collins, Senior Attorney and Dispute Resolution Officer, FAA Office of Dispute Resolution for Acquisition, AGC–70, Room 8332, Federal Aviation Administration, 400 7th Street, SW., Washington, DC 20590, telephone (202) 366–6400.

SUPPLEMENTARY INFORMATION: Later in this preamble under the Additional Information section, we discuss how you can comment on this proposal and how we will handle your comments. Included in this discussion is related information about the docket, privacy, and the handling of proprietary or confidential business information. We also discuss how you can get a copy of related rulemaking documents.

Authority for This Rulemaking and Background

In 1995 Congress, through the Department of Transportation

Appropriations Act,[1] directed the FAA "to develop and implement, not later than April 1, 1996, an acquisition management system that addressed the unique needs of the agency and, at a minimum, provided for more timely and cost effective acquisitions of equipment and materials." The Act instructed the FAA to design the system, notwithstanding provisions of Federal acquisition law, and to not use certain provisions of Federal acquisition law. In response, the FAA developed the Acquisition Management System (AMS) for the management of FAA procurement. The AMS included a system of policy guidance that maximized the use of agency discretion in the interest of best business practices. As a part of the AMS, the FAA created the Office of Dispute Resolution for Acquisition (ODRA) to facilitate the Administrator's review of procurement protests and contract disputes. In a 1996 notice[2] published in the **Federal Register**, the FAA announced the creation of the ODRA and stated the agency would promulgate rules of procedure governing the dispute resolution process.

In August 1998, the FAA issued a Notice of Proposed Rulemaking (NPRM)[3] that proposed regulations under 14 CFR part 17 for the conduct of protests and contract disputes under the FAA AMS. The comment period for the NPRM closed on October 26, 1998. On June 18, 1999,[4] the FAA published the final rule entitled, Procedures for Protests and Contract Disputes; Amendment of Equal Access to Justice Act Regulations, which codified (effective June 28, 1999) the procedures governing the dispute resolution process. On August 31, 1999, the FAA published a document[5] that made certain corrections to the June 1999 final rule.

In addition to the rules of procedures, ODRA operates pursuant to delegations of authority from the Administrator. In a memorandum signed (1998 Delegation) by the Administrator on July 29, 1998,[6] the Administrator generally authorized the ODRA through its Director to provide dispute resolution services including administrative adjudication of all bid protests and contract disputes under the AMS. The 1998 Delegation further provided that all final decisions must be executed by the Administrator. The 1998 Delegation was expanded by a Delegation dated March 27, 2000 (2000 Delegation), which provided additional authority to the ODRA Director "to execute and issue, on behalf of the Administrator, Orders and Final Decisions for the Administrator in all matters within the ODRA's jurisdiction valued at not more than $1 Million."[7] The 2000 Delegation was superseded by a Delegation of Authority from the Administrator, dated March 10, 2004 (2004 Delegation), which increased the dollar limit of the final decisional authority of the ODRA Director from $1 Million to $5 Million.[8] The 2004 Delegation was superseded by another Delegation of Authority dated March 31, 2010 (2010 Delegation), which increased the dollar limit of the final decisional authority of the ODRA Director from $5 Million to $10 Million.[9]

Congress provided further confirmation about the FAA's dispute resolution authority in the Vision 100—Century of Aviation Reauthorization Act of 2003 (2003 Reauthorization Act) *See* Public Law 108–176, § 224(b), 117 Stat. 2490, 2528 (codified as amended at 49 U.S.C. 40110(d)(4)), which confirmed the ODRA's exclusive jurisdiction. Specifically, the 2003 Reauthorization Act expressly provided at Subsection (b)(2)(4) under the title "Adjudication of Certain Bid Protests and Contract Disputes", that "[a] bid protest or contract dispute that is not addressed or resolved through alternative dispute resolution shall be adjudicated by the Administrator, through Dispute Resolution Officers or Special Masters of the Federal Aviation Administration Office of Dispute Resolution for Acquisition, acting pursuant to Sections 46102, 46104, 46105, 46106 and 46107 and shall be subject to judicial review under Section 46110 and Section 504 of Title 5."

The ODRA dispute resolution procedures encourage the parties to protests and contract disputes to use Alternative Dispute Resolution (ADR) as the primary means to resolve protests and contract disputes, pursuant to the Administrative Dispute Resolution Act of 1996 ("ADRA"), Pub. L. 104–320, 5 U.S.C. §§ 570–579, and in consonance with Department of Transportation and FAA policies to maximize the use of ADR to the extent possible. Under these procedures, the ODRA actively encourages the parties to consider ADR techniques such as case evaluation, mediation, arbitration, or other types of ADR. In this regard, on October 15, 2001, the FAA published in the **Federal Register** Final Guidance (66 FR 52475) for the use of binding arbitration for purposes of resolving bid protests and contract disputes relating to procurements and contracts under the FAA AMS after receiving the concurrence of the Attorney General in accordance with Section 575 of the ADRA. Additionally, the ODRA developed an informal pre-dispute process, which provides voluntary dispute avoidance services that are available to parties upon request.

Statement of the Problem

Since the issuance of the FAA's rules of procedure more than 10 years ago, the ODRA's statutory and regulatory authorities for conducting a dispute resolution process evolved, along with the body of case law interpreting those rules. The ODRA's implementation of these rules of procedure also resulted in the identification of procedural issues in need of clarification to provide uniform guidance. The ODRA further identified certain aspects of the rules that need revision to reflect evolving practices at the ODRA, as well as evolving dispute resolution practices in general. An example of such practices is the increased emphasis on early intervention and dispute avoidance efforts. In consideration of this changing environment, the FAA is proposing to amend part 17 to incorporate the evolving practices; reflect the availability of a pre-dispute process; reorganize and streamline the rules for ease of use; and harmonize the existing part 17 rules with current statutory and other authority.

General Discussion of the Proposal

The FAA's review of current part 17 identified aspects of the regulations that would benefit from a reorganization and consolidation of certain sections. For example, the procedures that pertain to filing and adjudicating protests and contract disputes are scattered throughout several subparts. In today's proposal, the procedures for filing and adjudicating protests and contract disputes are consolidated into subparts B and C, respectively. Also, the finality and review provisions are moved from current subpart F to proposed subpart E.

[1] Public Law 104–50, 109 Stat. 436 (November 15, 1995).

[2] 61 FR 24348; May 14, 1996.

[3] 63 FR 45372; August 25, 1998.

[4] 64 FR 32926; June 18, 1999.

[5] 64 FR 47361; August 31, 1999.

[6] The FAA published the text of the delegations set forth in the July 29, 1998 memorandum in the **Federal Register** (see 63 FR 49151; September 14, 1998).

[7] 65 FR 19958–01; April 13, 2000.

[8] 69 FR 17469–02; April 2, 2004.

[9] The 2010 Delegation was issued by the Administrator in a memorandum dated March 31, 2010. Although the FAA has not yet published the text of the memorandum in the **Federal Register**, the public can view the memorandum itself at *http://www.faa.gov/about/office_org/headquarters_offices/agc/pol_adjudication/agc70/odra_process/*.

The FAA also found that the regulations could be improved by including streamlined procedures, as well as providing expanded coverage in those instances where guidance was lacking or a process has evolved over time. Examples of expanded coverage include the proposed addition of a section on the confidentiality of ADR (§ 17.39) and a section for filing requests for reconsideration (§ 17.47). In addition to these proposed revisions, new sections are added to proposed subpart F to address "other matters" like sanctions and professional conduct. Further, new subpart G is added to address procedures for filing pre-disputes.

Discussion of the Proposed Regulatory Requirements

A discussion, organized by subpart, and excluding minor editorial revisions and clarifications, of proposed changes to 14 CFR part 17, follows.

Subpart A—General

Subpart A would be revised as noted below.

Definitions (§ 17.3)

The following new definitions would be added to this section: Adjudicative Process, Default Adjudicative Process, Counsel, Contractor, Legal Representative, and Pre-disputes.

Filing and Computation of Time (§ 17.7)

Paragraph (c) would be revised to clarify that "other days on which Federal Government offices in Washington, DC are not open" is an excluded timeframe in calculating time limits for filings. In addition, paragraph (d) would be added to allow the use of electronic filing where permitted by the ODRA.

Protective Orders (§ 17.9)

Paragraph (d) would be revised to explain the type of sanctions that could be imposed if a protective order is violated.

Subpart B—Protests

In subpart B, current § 17.21 (Protest remedies) would be renumbered as § 17.23, and the Adjudicative process for protests section that is currently in subpart E would be moved to proposed § 17.21.

Filing a Protest (§ 17.15)

Paragraph (d)(2) would be revised to make clear the standard of review for a request for a suspension or delay of the procurement. Also, paragraph (d)(3) would be added to explain the possible consequences of protesters' failure to provide appropriate supporting documentation in their requests to suspend a procurement or contract performance.

Initial Protest Procedures (§ 17.17)

In § 17.17(a), the timeframes for responding to a request for a suspension or delay of the procurement would be revised according to the established ODRA practice of granting an extension until the date of the initial status conference. In § 17.17(b), the purpose of the initial status conference would be clarified. In § 17.17(c), the requirement that parties file a joint statement about whether they are pursuing ADR, and the adjudication timeframes that automatically begin when no ADR is contemplated would be removed.

Motions Practice and Dismissal or Summary Decision of Protests (§ 17.19)

Paragraph (a) would be revised to clarify the use of appropriate motions for dismissal or summary decision of protests and the ODRA's standard of review for such motions. Paragraph (d) would be revised to clarify when such a decision is construed as a final agency order.

Adjudicative Process for Protests (§ 17.21)

In addition to moving the procedures for the Adjudicative Process for protests (from current § 17.37 of subpart E) to proposed § 17.21 of subpart B, this section would be revised to more fully address the management of the discovery process and the type of discovery that is authorized. This section would be further revised to delineate the ODRA's standard of review for protests, the development of the administrative record, and under what circumstances ex parte communications are permitted in protests. In addition, the revisions to this section would address the procedures for preparing and issuing the ODRA's findings and recommendations and final FAA order.

Protest Remedies (§ 17.23)

Paragraph (b) of this section would be revised to identify the factors the ODRA would consider in determining an appropriate remedy.

Subpart C—Contract Disputes

In subpart C, current §§ 17.23, 17.25, 17.27, and 17.29 would be renumbered as §§ 17.25, 17.27, 17.29 and 17.31, respectively. Section 17.33 (Adjudicative process for contract disputes), which would be moved from current § 17.39 of subpart E, would be added to proposed subpart C. Also, the requirement in current § 17.27 (Submission of joint or separate statements) would be deleted.

Filing a Contract Dispute (§ 17.25)

Paragraph (a) would be revised to provide additional guidance on the information to be included in the contract dispute. Paragraph (e) would be added to state the ODRA retains the discretion to modify any timeframe established by the regulations in connection to contract disputes.

Informal Resolution Period (§ 17.29)

This section would be revised to conform to current practice regarding the informal resolution process. This would include clarifications related to scheduling and assigning a potential neutral for ADR.

Dismissal or Summary Decision of Contract Disputes (§ 17.31)

Section 17.31 would be revised to clarify the standard for requesting a dismissal or summary decision, and the process for responding to and issuing a decision on a request for dismissal or summary decision. This section would also be revised to clarify when such a decision is to be construed as a final agency order.

Adjudicative Process for Contract Disputes (§ 17.33)

In addition to moving this section from current § 17.39 of subpart E, § 17.33 would be revised to clarify that the process for submitting the Dispute File applies to cases initiated by the contractor or alternatively by the FAA. Also, it would be revised to more fully explain what documents will be admitted into the administrative record and the timeframes for responding to written discovery. Further, the section would be revised to streamline the requirements for final submissions. Additionally, the proposed revisions would state that the ODRA must conduct a de novo review using the preponderance of the evidence standard, unless a different standard is required. The proposed revisions would also identify the circumstances under which ex parte communications are permitted in contract disputes.

Subpart D—Alternative Dispute Resolution

The current sections under subpart D would be renumbered from §§ 17.31 and 17.33 to §§ 17.35 and 17.37, respectively. Also, new § 17.39 (Confidentiality of ADR) would be added to provide the applicability of the Administrative Dispute Resolution Act of 1996, 5 U.S.C. § 571 et seq., and to

clarify how ADR communications are treated. Further, current § 17.35 (Selection of neutrals for the alternative dispute resolution process) would be deleted.

Subpart E—Finality and Review

As noted previously, §§ 17.37 and 17.39 of current subpart E (Default Adjudicative Process) would be moved to subparts B (§ 17.21) and C (§ 17.33), respectively. In today's proposal, the requirements in current subpart F (Finality and Review—§§ 17.41, 17.43, and 17.45) would be moved to subpart E. Also, § 17.47 (Reconsideration) would be added to subpart E to provide the timeframe for filing requests for reconsideration and to state the standard for reconsideration according to ODRA precedent.

Subpart F—Other Matters

Subpart F would be revised to add sections covering sanctions, decorum and professional conduct, the use of orders and subpoenas for testimony and document production, and Standing Orders of the ODRA Director.

Subpart G—Pre-Disputes

A new subpart (subpart G) would be added. This subpart would make clear that the pre-dispute process applies to all potential disputes arising under contracts or solicitations with the FAA. Also, it would set forth the process for filing a pre-dispute. Further, it would clarify the non-binding voluntary nature of the pre-dispute process and that it is subject to the confidentiality requirements of proposed § 17.39.

Appendix A to Part 17—Alternative Dispute Resolution (ADR)

Appendix A would be revised to eliminate the description of "Minitrial" and to add a provision that addresses and clarifies the use of binding arbitration.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there is no new information collection requirement associated with this proposed rule.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

IV. Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or Tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impact of the proposed rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it be included in the preamble if a full regulatory evaluation of the costs and benefits is not prepared. Such a determination has been made for this proposed rule.

The reasoning for this determination follows: Under the FAA's Acquisition Management System, the Office of Dispute Resolution for Acquisition (ODRA) manages the dispute resolution process, including administrative adjudication of all procurement protests and contract disputes. This proposed rule simplifies and clarifies the current part 17 regulations under which the ODRA operates, including clarifying language and definitions, reorganization and consolidation of certain sections, and simplification and clarification of certain procedures such as filing requirements. These changes would be cost beneficial as they make it easier to use the dispute resolution process.

In addition, the proposed rule is updated to incorporate changes in statutory authority and additional authority delegated by the Administrator to the ODRA. These changes would have no effect on costs or benefits. The rulemaking would also codify a voluntary dispute avoidance and early resolution process that the ODRA is already using. The voluntary process is inherently less costly than the more formal dispute resolution process. The FAA expects that codification of the voluntary process will increase its use, thereby lowering the cost of the dispute resolution process.

Since the changes to the proposed rule would either be cost beneficial or have no cost effect, we expect the proposed rule to have a minimal impact with positive benefits. The FAA therefore has determined that this proposed rule does not warrant a full regulatory evaluation. The FAA requests comments regarding this determination.

The FAA has also determined that this proposed rule is not a "significant regulatory action" as defined in section 3(f) of Executive Order 12866, and is not "significant" as defined in DOT's Regulatory Policies and Procedures.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration." The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that

the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

As noted above, the proposed changes to part 17 are either cost beneficial or have no effect on costs. Accordingly, the proposed rule would not have a significant impact on a substantial number of small entities. Therefore, the FAA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. The FAA requests comments regarding this determination.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation with the base year 1995) in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of $141.3 million.

This proposed rule does not contain such a mandate. The requirements of Title II do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action 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, and, therefore, would not have federalism implications.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this proposed rulemaking action qualifies for the categorical exclusion identified in paragraph 312d and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this NPRM under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a "significant energy action" under the executive order, it is not a "significant regulatory action" under Executive Order 12866 and DOT's Regulatory Policies and Procedures, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Additional Information

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, please send only one copy of written comments, or if you are filing comments electronically, please submit your comments only one time.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Proprietary or Confidential Business Information

Do not file in the docket information that you consider to be proprietary or confidential business information. Send or deliver this information directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document. You must mark the information that you consider proprietary or confidential. If you send the information on a disk or CD–ROM, mark the outside of the disk or CD–ROM and identify electronically within the disk or CD–ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), when we are aware of proprietary information filed with a comment, we do not place it in the docket. We hold it in a separate file to which the public does not have access, and we place a note in the docket that we have received it. If we receive a request to examine or copy this information, we treat it as any other request under the Freedom of Information Act (5 U.S.C. 552). We process such a request under the DOT procedures found in 49 CFR part 7.

Availability of Rulemaking Documents

You can get an electronic copy of rulemaking documents using the Internet by—

1. Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);
2. Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies* or
3. Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket or notice number of this rulemaking.

You may access all documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, from the Internet through the Federal eRulemaking Portal referenced in paragraph (1).

List of Subjects in 14 CFR Part 17

Administrative practice and procedure, Authority delegations (Government agencies), Government contracts.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Chapter I of Title 14, Code of Federal Regulations by revising part 17 to read as follows:

PART 17—PROCEDURES FOR PROTESTS AND CONTRACT DISPUTES

Subpart A—General

Subpart B—Protests

Authority: 5 U.S.C. 570—581, 49 U.S.C. 106(f)(2), 40110, 40111, 40112, 46102, 46014, 46105, 46109, and 46110.

Subpart A—General

§ 17.1 Applicability.

This part applies to all Acquisition Management System (AMS) bid protests and contract disputes involving the FAA that are filed at the Office of Dispute Resolution for Acquisition (ODRA) on or after the effective date of these regulations, with the exception of those contract disputes arising under or related to FAA contracts entered into prior to April 1, 1996, where such contracts have not been modified to be made subject to the FAA AMS. This part also applies to pre-disputes as described in subpart G hereof.

§ 17.3 Definitions.

(a) *Accrual* means to come into existence as a legally enforceable claim.

(b) *Accrual of a contract claim* means that all events relating to a claim have occurred, which fix liability of either the government or the contractor and permit assertion of the claim, regardless of when the claimant actually discovered those events. For liability to be fixed, some injury must have occurred. Monetary damages need not have been incurred, but if the claim is for money, such damages must be capable of reasonable estimation. The accrual of a claim or the running of the limitations period may be tolled on equitable grounds, including but not limited to active concealment, fraud, or if the facts were inherently unknowable.

(c) *Acquisition Management System* (AMS) establishes the policies, guiding principles, and internal procedures for the FAA's acquisition system.

(d) *Adjudicative Process* is an administrative adjudicatory process used to decide protests and contract disputes where the parties have not achieved resolution through informal communication or the use of ADR. The Adjudicative Process is conducted by a Dispute Resolution Officer (DRO) or Special Master selected by the ODRA Director to preside over the case in accordance with Public Law 108–176, Section 224, Codified at 49 U.S.C. 40110(d)(4).

(e) *Administrator* means the Administrator of the Federal Aviation Administration.

(f) *Alternative Dispute Resolution* (ADR) is the primary means of voluntary dispute resolution that is employed by the ODRA. *See* Appendix A of this part.

(g) *Compensated Neutral* refers to an impartial third party chosen by the parties to act as a facilitator, mediator, or arbitrator functioning to resolve the protest or contract dispute under the auspices of the ODRA. The parties pay equally for the services of a compensated neutral, unless otherwise agreed to by the parties. An ODRA DRO or neutral cannot be a compensated neutral.

(h) *Contract Dispute*, as used in this part, means a written request to the ODRA seeking, as a matter of right under an FAA contract subject to the AMS, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or for other relief arising under, relating to, or involving an alleged breach of that contract. A contract dispute does not require, as a prerequisite, the issuance of a Contracting Officer final decision. Contract disputes, for purposes of ADR only, may also involve contracts not subject to the AMS.

(i) *Counsel* refers to a Legal Representative who is an attorney licensed by a State, the District of Columbia, or a territory of the United States to practice law or appear before the courts of that State or territory.

(j) *Contractor* is a party in contractual privity with the FAA and responsible for performance of a contract's requirements.

(k) *Discovery* is the procedure whereby opposing parties in a protest or contract dispute may, either voluntarily or to the extent ordered by the ODRA, obtain testimony from, or documents and information held by, other parties or non-parties.

(l) *Dispute Resolution Officer* (DRO) is an attorney and member of the ODRA staff. The term DRO can include the Director of the ODRA.

(m) *Interested party*, in the context of a bid protest, is one whose direct economic interest has been or would be affected by the award or failure to award an FAA contract. Proposed subcontractors are not "interested parties" within this definition and are not eligible to submit protests to the ODRA. Subcontractors not in privity with the FAA are not interested parties in the context of a contract dispute.

(n) *Intervenor* is an interested party other than the protester whose participation in a protest is allowed by the ODRA. For a post-award protest, the awardee of the contract that is the subject of the protest will be allowed, upon timely request, to participate as an intervenor in the protest. In such a protest, no other interested parties will be allowed to participate as intervenors.

(o) *Legal Representative* is an individual(s) designated to act on behalf of a party in matters before the ODRA. Unless otherwise provided under §§ 17.15(c)(2), 17.27(a)(1), or 17.59(a)(6), a Notice of Appearance must be filed with the ODRA containing the name, address, telephone and facsimile (Fax) numbers of a party's legal representative.

(p) *Neutral* refers to an impartial third party in the ADR process chosen by the parties to act as a facilitator, mediator, arbitrator, or otherwise to aid the parties in resolving a protest or contract dispute. A neutral can be a DRO or a person not an employee of the ODRA.

(q) *ODRA* is the FAA's exclusive forum acting on behalf of the Administrator, pursuant to the statutory authority granted by Public Law 108–176, Section 224, to provide dispute resolution services and to adjudicate matters within its jurisdiction. The ODRA may also provide non-binding dispute resolution services in matters outside of its jurisdiction where mutually requested to do so by the parties involved.

(r) *Parties* include the protester(s) or the contractor, the FAA, and any intervenor(s).

(s) *Pre-Disputes* mean an issue(s) in controversy concerning an FAA contract or solicitation of the parties that, by mutual agreement, is filed with the ODRA. *See* subpart G, hereof.

(t) *Product Team*, as used in these rules, refers to the FAA organization(s) responsible for the procurement or

contracting activity, without regard to funding source, and includes the Contracting Officer (CO). The Product Team, acting through assigned FAA counsel, is responsible for all communications with and submissions to the ODRA in pending matters.

(u) *Screening Information Request* (SIR) or Solicitation means a request by the FAA for documentation, information, presentations, proposals, or binding offers concerning an approach to meeting potential acquisition requirements established by the FAA.

(v) A *Special Master* is a non-FAA attorney or judge who has been assigned by the ODRA to act as its finder of fact, and to make findings and recommendations based upon AMS policy and applicable law and authorities in the Adjudicative Process.

§ 17.5 Delegation of authority.

(a) The authority of the Administrator to conduct dispute resolution and adjudicative proceedings concerning acquisition matters, is delegated to the Director of the ODRA.

(b) The Director of the ODRA may redelegate to Special Masters and DROs such delegated authority in paragraph (a) of this section as deemed necessary by the Director for efficient resolution of an assigned protest or contract dispute, including the imposition of sanctions for the filing of frivolous pleadings, making false statements, or other disciplinary actions. *See* subpart F. hereof.

§ 17.7 Filing and computation of time.

(a) Filing of a protest or contract dispute may be accomplished by overnight delivery, by hand delivery, by Fax, or, if permitted by Order of the ODRA, by electronic filing. A protest or contract dispute is considered to be filed on the date it is received by the ODRA during normal business hours. The ODRA's normal business hours are from 8:30 a.m. to 5 p.m. Eastern Time. A protest or contract dispute received after the time period prescribed for filing, shall not be considered timely filed. Service shall also be made on the CO pursuant to §§ 17.15(e) and 17.27(d).

(b) Submissions to the ODRA after the initial filing of a protest or contract dispute may be accomplished by any means available in paragraph (a) of this section. Copies of all such submissions shall be served on the opposing party or parties.

(c) The time limits stated in this part are calculated in business days, which exclude weekends, Federal holidays and other days on which Federal Government offices in Washington, DC are not open. In computing time, the day of the event beginning a period of time shall not be included. If the last day of a period falls on a weekend or a Federal holiday, the first business day following the weekend or holiday shall be considered the last day of the period.

(d) *Electronic Filing.* Procedures for electronic filing may be utilized where permitted by Order of the ODRA on a case-by-case basis or pursuant to a Standing Order of the ODRA permitting electronic filing.

§ 17.9 Protective orders.

(a) The ODRA may issue protective orders addressing the treatment of protected information, including protected information in electronic form, either at the request of a party or upon its own initiative. Such information may include proprietary, confidential, or source-selection-sensitive material, or other information the release of which could result in a competitive advantage to one or more firms.

(b) The terms of the ODRA's standard protective order may be altered to suit particular circumstances, by negotiation of the parties, subject to the approval of the ODRA. The protective order establishes procedures for application for access to protected information, identification and safeguarding of that information, and submission of redacted copies of documents omitting protected information.

(c) After a protective order has been issued, counsel or consultants retained by counsel appearing on behalf of a party may apply for access to the material under the order by submitting an application to the ODRA, with copies furnished simultaneously to all parties. The application shall establish that the applicant is not involved in competitive decision making for any firm that could gain a competitive advantage from access to the protected information and that the applicant will diligently protect any protected information received from inadvertent disclosure. Objections to an applicant's admission shall be raised within two (2) days of the application, although the ODRA may consider objections raised after that time for good cause.

(d) Any violation of the terms of a protective order may result in the imposition of sanctions, including but not limited to removal of the violator from the protective order and reporting of the violator to his or her bar association(s), and the taking of other actions as the ODRA deems appropriate. Additional civil or criminal penalties may apply.

Subpart B—Protests

§ 17.11 Matters not subject to protest.

The following matters may not be protested before the ODRA, except for review of compliance with the AMS:

(a) FAA purchases from or through, State, local, and Tribal governments and public authorities;

(b) FAA purchases from or through other Federal agencies;

(c) Grants;

(d) Cooperative agreements;

(e) Other transactions.

§ 17.13 Dispute resolution process for protests.

(a) Protests concerning FAA SIRs, solicitations, or contract awards shall be resolved pursuant to this part.

(b) Potential protestors should, where possible, attempt to resolve any issues concerning potential protests with the CO. Such attempts are not a prerequisite to filing a protest with the ODRA.

(c) Offerors or prospective offerors shall file a protest with the ODRA in accordance with § 17.15. The protest time limitations set forth in § 17.15 will not be extended by attempts to resolve a potential protest with the CO. Other than the time limitations specified in § 17.15 for the filing of protests, the ODRA retains the discretion to modify any timeframes established herein in connection with protests.

(d) In accordance with § 17.17(b), the ODRA shall convene an initial status conference for the purpose of scheduling proceedings in the protest and to encourage the parties to consider using the ODRA's ADR process to attempt to resolve the protest, pursuant to subpart D of this part. It is the Agency's policy to use voluntary ADR to the maximum extent practicable. If the parties elect not to attempt ADR, or if ADR efforts do not completely resolve the protest, the protest will proceed under the ODRA Adjudicative Process set forth in subpart E of this part. Informal ADR techniques may be utilized simultaneously with ongoing adjudication.

(e) The ODRA Director shall designate DROs, outside neutrals or Special Masters as potential neutrals for the resolution of protests through ADR. The ultimate choice of an ADR neutral is made by the parties participating in the ADR. The ODRA Director also shall, at his or her sole discretion, designate an adjudicating DRO or Special Master for each matter. A person serving as a neutral in an ADR effort in a matter, shall not serve as an adjudicating DRO or Special Master for that matter.

(f) Multiple protests concerning the same SIR, solicitation, or contract award

may be consolidated at the discretion of the ODRA Director, and assigned to a single DRO or Special Master for adjudication.

(g) Procurement activities, and, where applicable, contractor performance pending resolution of a protest, shall continue during the pendency of a protest, unless there is a compelling reason to suspend all or part of the procurement activities or contractor performance. Pursuant to §§ 17.15(d) and 17.17(a), the ODRA may impose a temporary suspension and recommend suspension of award or contract performance, in whole or in part, for a compelling reason. A decision to suspend procurement activities or contractor performance is made in writing by the Administrator or the Administrator's delegee upon recommendation of the ODRA.

§ 17.15 - Filing a protest.

(a) An interested party may initiate a protest by filing with the ODRA in accordance with § 17.7(a) within the timeframes set forth in this Section. Protests that are not timely filed shall be dismissed. The timeframes applicable to the filing of protests are as follows:

(1) Protests based upon alleged improprieties in a solicitation or a SIR that are apparent prior to bid opening or the time set for receipt of initial proposals shall be filed prior to bid opening or the time set for the receipt of initial proposals.

(2) In procurements where proposals are requested, alleged improprieties that do not exist in the initial solicitation, but which are subsequently incorporated into the solicitation, must be protested not later than the next closing time for receipt of proposals following the incorporation.

(3) For protests other than those related to alleged solicitation improprieties, the protest must be filed on the later of the following two dates:

(i) Not later than seven (7) business days after the date the protester knew or should have known of the grounds for the protest; or

(ii) If the protester has requested a post-award debriefing from the FAA Product Team, not later than five (5) business days after the date on which the Product Team holds that debriefing.

(b) Protests shall be filed at: (1) ODRA, AGC–70, Federal Aviation Administration, 800 Independence Avenue, SW., Room 323, Washington, DC 20591. *Telephone:* (202) 267–3290. *Fax:* (202) 267–3720; or

(2) Other address as shall be published from time to time in the **Federal Register**.

(c) A protest shall be in writing, and set forth:

(1) The protester's name, address, telephone number, and FAX number;

(2) The name, address, telephone number, and FAX number of the protester's legal representative, and who shall be duly authorized to represent the protester, to be the point of contact;

(3) The SIR number or, if available, the contract number and the name of the CO;

(4) The basis for the protester's status as an interested party;

(5) The facts supporting the timeliness of the protest;

(6) Whether the protester requests a protective order, the material to be protected, and attach a redacted copy of that material;

(7) A detailed statement of both the legal and factual grounds of the protest, and attach one (1) copy of each relevant document;

(8) The remedy or remedies sought by the protester, as set forth in § 17.23;

(9) The signature of the legal representative, or another person duly authorized to represent the protester.

(d) If the protester wishes to request a suspension of the procurement or contract performance, in whole or in part, and believes that a compelling reason(s) exists to suspend the procurement or contract performance because of the protested action, the protester shall, in its initial filing:

(1) Set forth such compelling reason(s), supply all facts and documents supporting the protester's position; and

(2) Demonstrate—(i) The protester has alleged a substantial case; (ii) The lack of a suspension would be likely to cause irreparable injury; (iii) The relative hardships on the parties favor a suspension; and (iv) Whether a suspension is in the public interest.

(3) Failure of a protester to provide information or documents in support of a requested suspension or failure to address the elements of paragraph (d)(2) of this section may result in the summary rejection of the request for suspension, or a requirement that the protester supplement its request prior to the scheduling of a Product Team response to the request under § 17.17(a).

(e) Concurrently with the filing of a protest with the ODRA, the protester shall serve a copy of the protest on the CO and any other official designated in the SIR for receipt of protests, by means reasonably calculated to be received by the CO on the same day as it is to be received by the ODRA. The protest shall include a signed statement from the protester, certifying to the ODRA the manner of service, date, and time when a copy of the protest was served on the CO and other designated official(s).

(f) Upon receipt of the protest, the CO shall notify the awardee of a challenged contract award in writing of the existence of the protest. The awardee and/or interested parties shall notify the ODRA in writing, of their interest in participating in the protest as intervenors within two (2) business days of receipt of the CO's notification, and shall, in such notice, designate a person as the point of contact for the ODRA.

(g) The ODRA has discretion to designate the parties who shall participate in the protest as intervenors. In protests of awarded contracts, only the awardee may participate as an intervenor as a matter of right.

§ 17.17 Initial protest procedures.

(a) If, as part of its initial protest filing, the protester requests a suspension of procurement activities or contractor performance in whole or in part, in accordance with § 17.15(d), the Product Team shall submit a response to the request to the ODRA by no later than the close of business on the date of the initial scheduling conference or on such other date as is established by the ODRA. Copies of the response shall be furnished to the protester and any intervenor(s) so as to be received within the same timeframe. The protester and any intervenor(s) shall have the opportunity of providing additional comments on the response within two (2) business days of receiving it. Based on its review of such submissions, the ODRA, in its discretion, may:

(1) Decline the suspension request; or

(2) Recommend such suspension to the Administrator or the Administrator's designee. The ODRA also may impose a temporary suspension of no more than ten (10) business days, where it is recommending that the Administrator impose a suspension.

(b) Within five (5) business days of the filing of a protest, or as soon thereafter as practicable, the ODRA shall convene an initial status conference for purposes of:

(1) Reviewing the ODRA's ADR and adjudication procedures and establishing a preliminary schedule;

(2) Identifying legal or other preliminary or potentially dispositive issues and answering the parties' questions regarding the ODRA process;

(3) Dealing with issues related to protected information and the issuance of any needed protective order;

(4) Encouraging the parties to consider using ADR;

(5) Appointing a DRO as a potential ADR neutral to assist the parties in

considering ADR options and developing an ADR agreement; and

(6) For any other reason deemed appropriate by the DRO or by the ODRA.

(c) The Product Team and protester will have five (5) business days from the date of the initial status conference to decide whether they will attempt to use an ADR process in the case. With the agreement of the ODRA, ADR may be used concurrently with the adjudication of a protest. *See* § 17.37(e).

(d) Should the Product Team and protester elect to use ADR proceedings to resolve the protest, they will agree upon the neutral to conduct the ADR proceedings (either an ODRA DRO or a compensated neutral of their own choosing) pursuant to § 17.37, and shall execute and file with the ODRA a written ADR agreement. Agreement of any intervenor(s) to the use of ADR or the resolution of a dispute through ADR shall not be required.

(e) Should the Product Team or protester indicate that ADR proceedings will not be used, or if ADR is not successful in resolving the entire protest, the ODRA Director upon being informed of the situation, will schedule an adjudication of the protest.

§ 17.19 Motions practice and dismissal or summary decision of protests.

(a) Separate motions generally are discouraged in ODRA bid protests. Counsel and parties are encouraged to incorporate any such motions in their respective agency responses or comments. Parties and counsel are encouraged to attempt to resolve typical motions issues through the ODRA ADR process. The ODRA may rule on any non-dispositive motion, where appropriate and necessary, after providing an opportunity for briefing on the motion by all affected parties. Unjustifiable, inappropriate use of motions may result in the imposition of sanctions. Where appropriate, a party may request by dispositive motion to the ODRA, or the ODRA may recommend or order, that:

(1) The protest, or any count or portion of a protest, be dismissed for lack of jurisdiction, timeliness, or standing to pursue the protest;

(2) The protest, or any count or portion of a protest, be dismissed, if frivolous or without basis in fact or law, or for failure to state a claim upon which relief may be had;

(3) A summary decision be issued with respect to the protest, or any count or portion of a protest, if:

(i) There are no material facts in dispute and the undisputed material facts demonstrate that the Product Team decision, action or inaction in question, was consistent with the requirements of the AMS, had a rational basis, and was not arbitrary, capricious or an abuse of discretion; or

(ii) There are no material facts in dispute and the undisputed material facts demonstrate, that the Product Team decision, action or inaction in question, was inconsistent with the requirements of the AMS, lacked a rational basis or was arbitrary, capricious or an abuse of discretion.

(b) In connection with consideration of possible dismissal or summary decision, the ODRA shall consider any material facts in dispute, in a light most favorable to the party against whom the dismissal or summary decision would operate and draw all factual inferences in favor of the non-moving party.

(c) Either upon motion by a party or on its own initiative, the ODRA may, at any time, exercise its discretion to:

(1) Recommend to the Administrator dismissal or the issuance of a summary decision with respect to the entire protest;

(2) Dismiss the entire protest or issue a summary decision with respect to the entire protest, if delegated that authority by the Administrator; or

(3) Dismiss or issue a summary decision with respect to any count or portion of a protest.

(d) A dismissal or summary decision regarding the entire protest by either the Administrator, or the ODRA by delegation, shall be construed as a final agency order. A dismissal or summary decision that does not resolve all counts or portions of a protest shall not constitute a final agency order, unless and until such dismissal or decision is incorporated or otherwise adopted in a decision by the Administrator (or the ODRA, by delegation) regarding the entire protest.

(e) Prior to recommending or entering either a dismissal or a summary decision, either in whole or in part, the ODRA shall afford all parties against whom the dismissal or summary decision is to be entered the opportunity to respond to the proposed dismissal or summary decision.

§ 17.21 Adjudicative Process for protests.

(a) Other than for the resolution of preliminary or dispositive matters, the Adjudicative Process for protests will be commenced by the ODRA Director pursuant to § 17.17(e).

(b) The Director of the ODRA shall appoint a DRO or a Special Master to conduct the adjudication proceedings, develop the administrative record, and prepare findings and recommendations for review of the ODRA Director.

(c) The DRO or Special Master may conduct such proceedings and prepare procedural orders for the proceedings as deemed appropriate; and may require additional submissions from the parties.

(d) The Product Team response to the protest will be due to be filed and served ten (10) business days from the commencement of the ODRA Adjudication process. The Product Team response shall consist of a written chronological, supported statement of proposed facts, and a written presentation of applicable legal or other defenses. The Product Team response shall cite to and be accompanied by all relevant documents, which shall be chronologically indexed, individually tabbed, and certified as authentic and complete. A copy of the response shall be furnished so as to be received by the protester and any intervenor(s) on the same date it is filed with the ODRA. In all cases, the Product Team shall indicate the method of service used.

(e) Comments of the protester and the intervenor on the Product Team response will be due to be filed and served five (5) business days after their receipt of the response. Copies of such comments shall be provided to the other participating parties by the same means and on the same date as they are furnished to the ODRA. Comments may include any supplemental relevant documents.

(f) The ODRA may alter the schedule for filing of the Product Team response and the comments for good cause or to accommodate the circumstances of a particular protest.

(g) The DRO or Special Master may convene the parties and/or their representatives, as needed, to pursue the Adjudicative Process.

(h) If, in the sole judgment of the DRO or Special Master, the parties have presented written material sufficient to allow the protest to be decided on the record presented, the DRO or Special Master shall have the discretion to decide the protest on that basis.

(i) The parties may engage in limited, focused discovery with one another and, if justified, with non-parties, so as to obtain information relevant to the allegations of the protest.

(1) The DRO or Special Master shall manage the discovery process, including limiting its length and availability, and shall establish schedules and deadlines for discovery, which are consistent with timeframes established in this part and with the FAA policy of providing fair and expeditious dispute resolution.

(2) The DRO or Special Master may also direct the parties to exchange, in an expedited manner, relevant, non-privileged documents.

(3) Where justified, the DRO or Special Master may direct the taking of deposition testimony, however, the FAA dispute resolution process does not contemplate extensive discovery.

(4) The use of interrogatories and requests for admission is not permitted in ODRA bid protests.

(5) Where parties cannot voluntarily reach agreement on a discovery-related issue, they may timely seek assistance from an ODRA ADR neutral or may file an appropriate motion with the ODRA. Parties may request a subpoena.

(6) Discovery requests and responses are not part of the record and will not be filed with the ODRA, except in connection with a motion or other permissible filing.

(7) Unless timely objection is made, documents properly filed with the ODRA will be deemed admitted into the administrative record.

(k) Hearings are not typically held in bid protests. The DRO or Special Master may conduct hearings, and may limit the hearings to the testimony of specific witnesses and/or presentations regarding specific issues. The DRO or Special Master shall control the nature and conduct of all hearings, including the sequence and extent of any testimony. Hearings will be conducted:

(1) Where the DRO or Special Master determines that there are complex factual issues in dispute that cannot adequately or efficiently be developed solely by means of written presentations and/or that resolution of the controversy will be dependent on his/her assessment of the credibility of statements provided by individuals with first-hand knowledge of the facts; or

(2) Upon request of any party to the protest, unless the DRO or Special Master finds specifically that a hearing is unnecessary and that no party will be prejudiced by limiting the record in the adjudication to the parties' written submissions. All witnesses at any such hearing shall be subject to cross-examination by the opposing party and to questioning by the DRO or Special Master.

(l) The Director of the ODRA may review the status of any protest in the Adjudicative Process with the DRO or Special Master.

(m) After the closing of the administrative record, the DRO or Special Master will prepare and submit findings and recommendations to the ODRA that shall contain the following:

(1) Findings of fact;

(2) Application of the principles of the AMS, and any applicable law or authority to the findings of fact;

(3) A recommendation for a final FAA order; and

(4) If appropriate, suggestions for future FAA action.

(n) In preparing findings and recommendations in protests, the DRO or Special Master, using the preponderance of the evidence standard, shall consider whether the Product Team actions in question were consistent with the requirements of the AMS, had a rational basis, and whether the Product Team decision was arbitrary, capricious or an abuse of discretion. Notwithstanding the above, allegations that government officials acted with bias or in bad faith must be established by clear and convincing evidence.

(o) The DRO or Special Master has broad discretion to recommend a remedy that is consistent with § 17.23.

(p) A DRO or Special Master shall submit findings and recommendations only to the Director of the ODRA or the Director's designee. The findings and recommendations will be released to the parties and to the public upon issuance of the final FAA order in the case. Should an ODRA protective order be issued in connection with the protest, or should a protest involve proprietary or competition-sensitive information, a redacted version of the findings and recommendations, omitting any protected information, shall be prepared wherever possible and released to the public, as soon as is practicable, along with a copy of the final FAA order. Only persons admitted by the ODRA under the protective order and Government personnel shall be provided copies of the unredacted findings and recommendations that contain proprietary or competition-sensitive information.

(q) Other than communications regarding purely procedural matters or ADR, there shall be no substantive ex parte communication between ODRA personnel and any principal or representative of a party concerning a pending or potentially pending matter. A potential or serving ADR neutral may communicate on an ex parte basis to establish or conduct the ADR.

§ 17.23 Protest remedies.

(a) The ODRA has broad discretion to recommend and impose protest remedies that are consistent with the AMS and applicable law. Such remedies may include, but are not limited to one or more, or a combination of, the following:

(1) Amend the SIR;

(2) Refrain from exercising options under the contract;

(3) Issue a new SIR;

(4) Require a recompetition or revaluation;

(5) Terminate an existing contract for the FAA's convenience;

(6) Direct an award to the protester;

(7) Award bid and proposal costs; or

(8) Any other remedy consistent with the AMS that is appropriate under the circumstances.

(b) In determining the appropriate recommendation, the ODRA may consider the circumstances surrounding the procurement or proposed procurement including, but not limited to: the nature of the procurement deficiency; the degree of prejudice to other parties or to the integrity of the acquisition system; the good faith of the parties; the extent of performance completed; the feasibility of any proposed remedy; the urgency of the procurement; the cost and impact of the recommended remedy, and the impact on the Agency's mission.

(c) Attorney's fees of a prevailing protester are allowable to the extent permitted by the Equal Access to Justice Act, 5 U.S.C. 504(a)(1)(EAJA) and 14 CFR part 14.

Subpart C—Contract Disputes

§ 17.25 Dispute resolution process for contract disputes.

(a) All contract disputes arising under contracts subject to the AMS shall be resolved under this subpart.

(b) Contract disputes shall be filed with the ODRA pursuant to § 17.27.

(c) The ODRA has broad discretion to recommend remedies for a contract dispute that are consistent with the AMS and applicable law, including such equitable remedies or other remedies as it deems appropriate.

§ 17.27 Filing a contract dispute.

(a) Contract disputes must be in writing and should contain:

(1) The contractor's name, address, telephone and Fax numbers and the name, address, telephone and Fax numbers of the contractor's legal representative(s) (if any) for the contract dispute;

(2) The contract number and the name of the Contracting Officer;

(3) A detailed chronological statement of the facts and of the legal grounds underlying the contract dispute, broken down by individual claim item, citing to relevant contract provisions and attaching copies of the contract and other relevant documents;

(4) Information establishing the ODRA's jurisdiction and the timeliness of the contract dispute;

(5) A request for a specific remedy, and the amount, if known, of any monetary remedy requested, together with pertinent cost information and

documentation (*e.g.*, invoices and cancelled checks). Supporting documentation should be broken down by individual claim item and summarized; and

(6) The signature of a duly authorized representative of the initiating party.

(b) Contract disputes shall be filed at the following address: ODRA, AGC–70, Federal Aviation Administration, 800 Independence Avenue, SW., Room 323, Washington, DC 20591. *Telephone:* (202) 267–3290. *Fax:* (202) 267–3720.

(c) A contract dispute against the FAA shall be filed with the ODRA within two (2) years of the accrual of the contract claim involved. A contract dispute by the FAA against a contractor (excluding contract disputes alleging warranty issues, fraud or latent defects) likewise shall be filed within two (2) years of the accrual of the contract claim. If an underlying contract entered into prior to the effective date of this part provides for time limitations for filing of contract disputes with the ODRA, which differ from the aforesaid two (2) year period, the limitation periods in the contract shall control over the limitation period of this section. In no event will either party be permitted to file with the ODRA a contract dispute seeking an equitable adjustment or other damages after the contractor has accepted final contract payment, with the exception of FAA contract disputes related to warranty issues, gross mistakes amounting to fraud or latent defects. FAA contract disputes against the contractor based on warranty issues must be filed within the time specified under applicable contract warranty provisions. Any FAA contract disputes against the contractor based on gross mistakes amounting to fraud or latent defects shall be filed with the ODRA within two (2) years of the date on which the FAA knew or should have known of the presence of the fraud or latent defect.

(d) A party shall serve a copy of the contract dispute upon the other party, by means reasonably calculated to be received on the same day as the filing is received by the ODRA.

(e) With the exception of the time limitations established herein for the filing of contract disputes, the ODRA retains the discretion to modify any timeframe established herein in connection with contract disputes.

§ 17.29 Informal resolution period.

(a) The ODRA process for contract disputes includes an informal resolution period of twenty (20) business days from the date of filing in order for the parties to attempt to informally resolve the contract dispute either through direct negotiation or with the assistance of the ODRA. The CO, with the advice of FAA legal counsel, has full discretion to settle contract disputes, except where the matter involves fraud.

(b) During the informal resolution period, if the parties request it, the ODRA will appoint a DRO for ADR who will discuss ADR options with the parties, offer his or her services as a potential neutral, and assist the parties to enter into an agreement for a formal ADR process. A person serving as a neutral in an ADR effort in a matter shall not serve as an adjudicating DRO or Special Master for that matter.

(c) The informal resolution period may be extended at the request of the parties for good cause.

(d) If the matter has not been resolved informally, the parties shall file joint or separate statements with the ODRA no later than twenty (20) business days after the filing of the contract dispute. The ODRA may extend this time, pursuant to § 17.27(e). The statement(s) shall include either:

(1) A joint request for ADR, or an executed ADR agreement, pursuant to § 17.37(d), specifying which ADR techniques will be employed; or

(2) Written explanation(s) as to why ADR proceedings will not be used and why the Adjudicative Process will be needed.

(e) If the contract dispute is not completely resolved during the informal resolution period, the ODRA's Adjudicative Process will commence unless the parties have reached an agreement to attempt a formal ADR effort. As part of such an ADR agreement the parties, with the concurrence of the ODRA, may agree to defer commencement of the adjudication process pending completion of the ADR or that the ADR and adjudication process will run concurrently. If a formal ADR is attempted but does not completely resolve the contract dispute, the Adjudicative Process will commence.

(f) The ODRA shall hold a status conference with the parties within ten (10) business days, or as soon thereafter as is practicable, of the ODRA's receipt of a written notification that ADR proceedings will not be used, or have not fully resolved the Contract Dispute. The purpose of the status conference will be to commence the Adjudicative Process and establish the schedule for adjudication.

(g) The submission of a statement which indicates that ADR will not be utilized will not in any way preclude the parties from engaging in non-binding ADR techniques during the Adjudicative Process, pursuant to subpart D.

§ 17.31 Dismissal or summary decision of contract disputes.

(a) Any party may request by motion, or the ODRA on its own initiative may recommend or direct, that a contract dispute be dismissed, or that a count or portion thereof be stricken, if:

(1) It was not timely filed;

(2) It was filed by a subcontractor or other person or entity lacking standing;

(3) It fails to state a matter upon which relief may be had; or

(4) It involves a matter not subject to the jurisdiction of the ODRA.

(b) Any party may request by motion, or the ODRA on its own initiative may recommend or direct, that a summary decision be issued with respect to a contract dispute, or any count or portion thereof if there are no material facts in dispute and a party is entitled to a summary decision as a matter of law.

(c) In connection with any potential dismissal of a contract dispute, or summary decision, the ODRA will consider any material facts in dispute in a light most favorable to the party against whom the dismissal or summary decision would be entered, and draw all factual inferences in favor of that party.

(d) At any time, whether pursuant to a motion or on its own initiative and at its discretion, the ODRA may:

(1) Dismiss or strike a count or portion of a contract dispute or enter a partial summary decision;

(2) Recommend to the Administrator that the entire contract dispute be dismissed or that a summary decision be entered; or

(3) With a delegation from the Administrator, dismiss the entire contract dispute or enter a summary decision with respect to the entire contract dispute.

(e) An order of dismissal of the entire contract dispute or summary decision with respect to the entire contract dispute, issued either by the Administrator or by the ODRA, on the grounds set forth in this section, shall constitute a final agency order. An ODRA order dismissing or striking a count or portion of a contract dispute or entering a partial summary judgment shall not constitute a final agency order, unless and until such ODRA order is incorporated or otherwise adopted in a final agency decision of the Administrator or the Administrator's delegee regarding the remainder of the dispute.

(f) Prior to recommending or entering either a dismissal or a summary decision, either in whole or in part, the ODRA shall afford all parties against

whom the dismissal or summary decision would be entered the opportunity to respond to a proposed dismissal or summary decision.

§ 17.33 Adjudicative Process for contract disputes.

(a) The Adjudicative Process for contract disputes will be commenced by the ODRA Director upon being notified by the ADR neutral or by any party that either:

(1) The parties will not be attempting ADR; or

(2) The parties have not settled all of the dispute issues via ADR, and it is unlikely that they can do so within the time period allotted and/or any reasonable extension.

(b) In cases initiated by a contractor against the FAA, within twenty (20) business days of the commencement of the Adjudicative Process or as scheduled by the ODRA, the Product Team shall prepare and submit to the ODRA, with a copy to the contractor, a chronologically arranged and indexed substantive response, containing a legal and factual position regarding the dispute and all documents relevant to the facts and issues in dispute. The contractor will be entitled, at a specified time, to supplement the record with additional documents.

(c) In cases initiated by the FAA against a contractor, within twenty (20) business days of the commencement of the Adjudicative Process or as scheduled by the ODRA, the contractor shall prepare and submit to the ODRA, with a copy to the Product Team counsel, a chronologically arranged and indexed substantive response, containing a legal and factual position regarding the dispute and all documents relevant to the facts and issues in dispute. The Product Team will be entitled, at a specified time, to supplement the record with additional documents.

(d) Unless timely objection is made, documents properly filed with the ODRA will be deemed admitted into the administrative record. Discovery requests and responses are not part of the record and will not be filed with the ODRA, except in connection with a motion or other permissible filing. Designated, relevant portions of such documents may be filed, with the permission of the ODRA.

(e) The Director of the ODRA shall assign a DRO or a Special Master to conduct adjudicatory proceedings, develop the administrative adjudication record and prepare findings and recommendations for the review of the ODRA Director or the Director's designee.

(f) The DRO or Special Master may conduct a status conference(s) as necessary and issue such orders or decisions as are necessary to promote the efficient resolution of the contract dispute.

(g) At any such status conference, or as necessary during the Adjudicative Process, the DRO or Special Master will:

(1) Determine the appropriate amount of discovery required to resolve the dispute;

(2) Review the need for a protective order, and if one is needed, prepare a protective order pursuant to § 17.9;

(3) Determine whether any issue can be stricken; and

(4) Prepare necessary procedural orders for the proceedings.

(h) Unless otherwise provided by the DRO or Special Master, or by agreement of the parties with the concurrence of the DRO or Special Master, responses to written discovery shall be due within thirty (30) business days from the date received.

(i) At a time or at times determined by the DRO or Special Master, and in advance of the decision of the case, the parties shall make individual final submissions to the ODRA and to the DRO or Special Master, which submissions shall include the following:

(1) A statement of the issues;

(2) A proposed statement of undisputed facts related to each issue together with citations to the administrative record or other supporting materials;

(3) Separate statements of disputed facts related to each issue, with appropriate citations to documents in the Dispute File, to pages of transcripts of any hearing or deposition, or to any affidavit or exhibit which a party may wish to submit with its statement;

(4) Separate legal analyses in support of the parties' respective positions on disputed issues.

(j) Each party shall serve a copy of its final submission on the other party by means reasonably calculated so that the other party receives such submissions on the same day it is received by the ODRA.

(k) The DRO or Special Master may decide the contract dispute on the basis of the administrative record and the submissions referenced in this section, or may, in the DRO or Special Master's discretion, direct the parties to make additional presentations in writing. The DRO or Special Master may conduct hearings, and may limit the hearings to the testimony of specific witnesses and/or presentations regarding specific issues. The DRO or Special Master shall control the nature and conduct of all hearings, including the sequence and extent of any testimony. Evidentiary hearings on the record shall be conducted by the ODRA:

(1) Where the DRO or Special Master determines that there are complex factual issues in dispute that cannot adequately or efficiently be developed solely by means of written presentations and/or that resolution of the controversy will be dependent on his/her assessment of the credibility of statements provided by individuals with first-hand knowledge of the facts; or

(2) Upon request of any party to the contract dispute, unless the DRO or Special Master finds specifically that a hearing is unnecessary and that no party will be prejudiced by limiting the record in the adjudication to the parties' written submissions. All witnesses at any such hearing shall be subject to cross-examination by the opposing party and to questioning by the DRO or Special Master.

(l) The DRO or Special Master shall prepare findings and recommendations, which will contain findings of fact, application of the principles of the AMS and other law or authority applicable to the findings of fact, a recommendation for a final FAA order.

(m) The DRO or Special Master shall conduct a de novo review using the preponderance of the evidence standard, unless a different standard is prescribed for a particular issue. Notwithstanding the above, allegations that government officials acted with bias or in bad faith must be established by clear and convincing evidence.

(n) The Director of the ODRA may review the status of any contract dispute in the Adjudicative Process with the DRO or Special Master.

(o) A DRO or Special Master shall submit findings and recommendations to the Director of the ODRA or the Director's designee. The findings and recommendations will be released to the parties and to the public, upon issuance of the final FAA order in the case. Should an ODRA protective order be issued in connection with the contract dispute, or should the matter involve proprietary or competition-sensitive information, a redacted version of the findings and recommendations omitting any protected information, shall be prepared wherever possible and released to the public, as soon as is practicable, along with a copy of the final FAA order. Only persons admitted by the ODRA under the protective order and Government personnel shall be provided copies of the unredacted findings and recommendations.

(p) Attorneys' fees of a qualified prevailing contractor are allowable to

the extent permitted by the EAJA, 5 U.S.C. 504(a)(1). *See* 14 CFR part 14.

(q) Other than communications regarding purely procedural matters or ADR, there shall be no substantive ex parte communication between ODRA personnel and any principal or representative of a party concerning a pending or potentially pending matter. A potential or serving ADR neutral may communicate on an ex parte basis to establish or conduct the ADR.

Subpart D—Alternative Dispute Resolution

§ 17.35 Use of alternative dispute resolution.

(a) By statutory mandate, it is the policy of the FAA to use voluntary ADR to the maximum extent practicable to resolve matters pending at the ODRA. The ODRA therefore uses voluntary ADR as its primary means of resolving all factual, legal, and procedural controversies.

(b) The parties are encouraged to make a good faith effort to explore ADR possibilities in all cases and to employ ADR in every appropriate case. The ODRA uses ADR techniques such as mediation, neutral evaluation, binding arbitration or variations of these techniques as agreed by the parties and approved by the ODRA. At the beginning of each case, the ODRA assigns a DRO as a potential neutral to explore ADR options with the parties and to convene an ADR process. *See* § 17.35(b).

(c) The ODRA Adjudicative Process will be used where the parties cannot achieve agreement on the use of ADR; or where ADR has been employed but has not resolved all pending issues in dispute; or where the ODRA concludes that ADR will not provide an expeditious means of resolving a particular dispute. Even where the Adjudicative Process is to be used, the ODRA, with the parties' consent, may employ informal ADR techniques concurrently with the adjudication.

§ 17.37 Election of alternative dispute resolution process.

(a) The ODRA will make its personnel available to serve as Neutrals in ADR proceedings and, upon request by the parties, will attempt to make qualified non-FAA personnel available to serve as Neutrals through neutral-sharing programs and other similar arrangements. The parties may elect to employ a mutually acceptable compensated neutral at their expense.

(b) The parties using an ADR process to resolve a protest shall submit an executed ADR agreement containing the information outlined in paragraph (d) of this section to the ODRA pursuant to § 17.17(c). The ODRA may extend this time for good cause.

(c) The parties using an ADR process to resolve a contract dispute shall submit an executed ADR agreement containing the information outlined in paragraph (d) of this section to the ODRA pursuant to § 17.29.

(d) The parties to a protest or contract dispute who elect to use ADR must submit to the ODRA an ADR agreement setting forth:

(1) The agreed ADR procedures to be used; and

(2) The name of the neutral. If a compensated neutral is to be used, the agreement must address how the cost of the neutral's services will be reimbursed.

(e) Non-binding ADR techniques are not mutually exclusive, and may be used in combination if the parties agree that a combination is most appropriate to the dispute. The techniques to be employed must be determined in advance by the parties and shall be expressly described in their ADR agreement. The agreement may provide for the use of any fair and reasonable ADR technique that is designed to achieve a prompt resolution of the matter. An ADR agreement for non-binding ADR shall provide for a termination of ADR proceedings and the commencement of adjudication under the Adjudicative Process, upon the election of any party. Notwithstanding such termination, the parties may still engage with the ODRA in informal ADR techniques (neutral evaluation and/or informal mediation) concurrently with adjudication.

(f) Binding arbitration is available through the ODRA, subject to the provisions of applicable law and the ODRA Binding Arbitration Guidance dated October 2001 as developed in consultation with the Department of Justice.

(g) The parties may, where appropriate in a given case, submit to the ODRA a negotiated protective order for use in ADR in accordance with the requirements of § 17.9.

§ 17.39 Confidentiality of ADR.

(a) The provisions of the Administrative Dispute Resolution Act of 1996, 5 U.S.C. 571, *et seq.*, shall apply to ODRA ADR proceedings.

(b) The ODRA looks to the principles of the Federal Rule of Evidence 408 in deciding admissibility issues related to ADR communications.

(c) ADR communications are not part of the administrative record.

Subpart E—Finality and Review

§ 17.41 Final orders.

All final FAA orders regarding protests or contract disputes under this part are to be issued by the FAA Administrator or by a delegee of the Administrator.

§ 17.43 Judicial review.

(a) A protester or contractor may seek review of a final FAA order, pursuant to 49 U.S.C. 46110, only after the administrative remedies of this part have been exhausted.

(b) A copy of the petition for review shall be filed with the ODRA and the FAA Chief Counsel on the date that the petition for review is filed with the appropriate circuit court of appeals.

§ 17.45 Conforming amendments.

The FAA shall amend pertinent provisions of the AMS, standard contract forms and clauses, and any guidance to contracting officials, so as to conform to the provisions of this part.

§ 17.47 Reconsideration.

The ODRA will not entertain requests for reconsideration as a routine matter, or where such requests evidence mere disagreement with a decision or restatements of previous arguments. A party seeking reconsideration must demonstrate either clear errors of fact or law in the underlying decision or previously unavailable evidence that warrants reversal or modification of the decision. In order to be considered, requests for reconsideration must be filed within ten (10) business days of the date of issuance of the public version of the subject decision or order.

Subpart F—Other Matters

§ 17.49 Sanctions.

If any party or its representative fails to comply with an Order or Directive of the ODRA, the ODRA may enter such orders and take such other actions as it deems necessary and in the interest of justice.

§ 17.51 Decorum and professional conduct.

Legal representatives are expected to conduct themselves at all times in a civil and respectful manner appropriate to an administrative forum. Additionally, counsel are expected to conduct themselves at all times in a professional manner and in accordance with all applicable rules of professional conduct.

§ 17.53 Orders and subpoenas for testimony and document production.

(a) Parties are encouraged to seek cooperative and voluntary production of

documents and witnesses prior to requesting a subpoena or an order under this section.

(b) Upon request by a party, or on his or her own initiative, a DRO or Special Master may, for good cause shown, order a person to give testimony by deposition and to produce records. Section 46104(c) of Title 49 of the United States Code governs the conduct of depositions or document production.

(c) Upon request by a party, or on his or her own initiative, a DRO or Special Master may, for good cause shown, subpoena witnesses or records related to a hearing from any place in the United States to the designated place of a hearing.

(d) A subpoena or order under this section may be served by a United States marshal or deputy marshal, or by any other person who is not a party and not less than 18 years of age. Service upon a person named therein shall be made by personally delivering a copy to that person and tendering the fees for one day's attendance and the mileage provided by 28 U.S.C. 1821 or other applicable law; however, where the subpoena is issued on behalf of the Product Team, money payments need not be tendered in advance of attendance. The person serving the subpoena or order shall file a declaration of service with the ODRA, executed in the form required by 28 U.S.C. 1746. The declaration of service shall be filed promptly with the ODRA, and before the date on which the person served must respond to the subpoena or order.

(e) Upon written motion by the person subpoenaed or ordered under this section, or by a party, made within ten (10) business days after service, but in any event not later than the time specified in the subpoena or order for compliance, the DRO may:

(1) Rescind or modify the subpoena or order if it is unreasonable and oppressive or for other good cause shown, or

(2) Require the party in whose behalf the subpoena or order was issued to advance the reasonable cost of producing documentary evidence. Where circumstances require, the DRO may act upon such a motion at any time after a copy has been served upon all parties.

(f) The party that requests the DRO to issue a subpoena or order under this section shall be responsible for the payment of fees and mileage, as required by 49 U.S.C. 46104(d), for witnesses, officers who serve the order, and the officer before whom a deposition is taken.

(g) Subpoenas and orders issued under this section may be enforced in a judicial proceeding under 49 U.S.C. 46104(b).

§ 17.55 Standing orders of the ODRA director.

The Director may issue such Standing Orders as necessary for the orderly conduct of business before the ODRA.

Subpart G—Pre-Disputes

§ 17.57 Pre-dispute resolution process.

(a) All potential disputes arising under contracts or solicitations with the FAA may be resolved with the consent of the parties to the dispute under this subpart.

(b) Pre-disputes shall be filed with the ODRA pursuant to § 17.59.

(c) The time limitations for the filing of Protests and Contract Disputes established in §§ 17.15(a) and 17.27(c) will not be extended by efforts to resolve the dispute under this subpart.

§ 17.59 Filing a pre-dispute.

(a) A Pre-dispute must be in writing, affirmatively state that it is a Pre-dispute pursuant to this subpart, and shall contain:

(1) The party's name, address, telephone and Fax numbers and the name, address, telephone and Fax numbers of the contractor's legal representative(s) (if any);

(2) The contract or solicitation number and the name of the Contracting Officer;

(3) A chronological statement of the facts and of the legal grounds for the party's positions regarding the dispute citing to relevant contract or solicitation provisions and documents and attaching copies of those provisions and documents; and

(6) The signature of a duly authorized legal representative of the initiating party.

(b) Pre-disputes shall be filed at the following address: ODRA, AGC–70, Federal Aviation Administration, 800 Independence Avenue, SW., Room 323, Washington, DC 20591. *Telephone:* (202) 267–3290, *Fax:* (202) 267–3720.

(c) Upon the filing of a Pre-dispute with the ODRA, the ODRA will contact the opposing party to offer its services pursuant to § 17.57. If the opposing party agrees, the ODRA will provide Pre-dispute services. If the opposing party does not agree, the ODRA Pre-dispute file will be closed and no service will be provided.

§ 17.61 Use of alternative dispute resolution.

(a) Only non-binding, voluntary ADR will be used to attempt to resolve a Pre-dispute pursuant to § 17.37.

(b) ADR conducted under this subpart is subject to the confidentiality requirements of § 17.39.

Appendix A to Part 17—Alternative Dispute Resolution (ADR)

A. The FAA dispute resolution procedures encourage the parties to protests and contract disputes to use ADR as the primary means to resolve protests and contract disputes, pursuant to the Administrative Dispute Resolution Act of 1996, Public Law 104–320, 5 U.S.C. 570–579, and Department of Transportation and FAA policies to utilize ADR to the maximum extent practicable. Under the procedures presented in this part, the ODRA encourages parties to consider ADR techniques such as case evaluation, mediation, or arbitration.

B. ADR encompasses a number of processes and techniques for resolving protests or contract disputes. The most commonly used types include:

(1) *Mediation.* The neutral or compensated neutral ascertains the needs and interests of both parties and facilitates discussions between or among the parties and an amicable resolution of their differences, seeking approaches to bridge the gaps between the parties' respective positions. The neutral or compensated neutral can meet with the parties separately, conduct joint meetings with the parties' representatives, or employ both methods in appropriate cases.

(2) *Neutral Evaluation.* At any stage during the ADR process, as the parties may agree, the neutral or compensated neutral will provide a candid assessment and opinion of the strengths and weaknesses of the parties' positions as to the facts and law, so as to facilitate further discussion and resolution.

(3) *Binding Arbitration.* The ODRA, after consultation with the United States Department of Justice in accordance with the provisions of the Administrative Disputes Resolution Act to offer true binding arbitration in cases within its jurisdiction. The ODRA's Guidance for the Use of Binding Arbitration may be found on its Web site at: *http://www.faa.gov/go/odra.*

Issued in Washington, DC, on January 4, 2011.

Anthony N. Palladino,

Director, Office of Dispute Resolution for Acquisition.

[FR Doc. 2011–397 Filed 1–11–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249

[Release No. 34–63652; File No. S7–02–11]

RIN 3235–AK89

Suspension of the Duty To File Reports for Classes of Asset-Backed Securities Under Section 15(d) of the Securities Exchange Act of 1934

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: Section 942(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act eliminated the automatic suspension of the duty to file under Section 15(d) of the Securities Exchange Act of 1934 for asset-backed securities issuers and granted the Commission the authority to issue rules providing for the suspension or termination of such duty. We are proposing to permit suspension of the reporting obligations for asset-backed securities issuers when there are no longer asset-backed securities of the class sold in a registered transaction held by non-affiliates of the depositor. We are also proposing to amend our rules relating to the Exchange Act reporting obligations of asset-backed securities issuers in light of these statutory changes.

DATES: Comments should be received on or before February 7, 2011.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*);
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–02–11 on the subject line; or
- Use the Federal Rulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–02–11. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for 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. 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: Steven Hearne, Special Counsel, or Kathy Hsu, Senior Special Counsel, in the Office of Rulemaking, at (202) 551–3430, Division of Corporation Finance, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: We are proposing amendments to Rules 12h–3 and 15d–22 [1] and Form 15 [2] under the Securities Exchange Act of 1934 ("Exchange Act").[3]

I. Background

This release is one of several that the Commission is issuing to implement provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act") [4] related to asset-backed securities ("ABS"). Section 942(a) of the Act eliminated the automatic suspension of the duty to file under Section 15(d) [5] of the Exchange Act for ABS issuers and granted the Commission the authority to issue rules providing for the suspension or termination of such duty. In this release, we propose rule amendments to permit the suspension of reporting obligations for ABS issuers under certain circumstances and to update our rules in light of the amendment of Exchange Act Section 15(d).

Exchange Act Section 15(d) generally requires an issuer with a registration statement that has become effective pursuant to the Securities Act of 1933 [6] ("Securities Act") to file ongoing Exchange Act reports with the Commission. In 2004, the Commission adopted an Exchange Act reporting regime specifically designed for ABS issuers. Under those rules, the Exchange Act reporting requirements for ABS issuers consist of:

- Annual reports on Form 10–K [7] that include a report on the assessment of compliance with servicing criteria as well as an attestation report on assessments of compliance by a registered public accounting firm;
- Distribution reports on Form 10–D [8] that include distribution and pool performance information for the distribution period and disclosure regarding the assets filed based on the frequency of distributions on the ABS; and
- Current reports on Form 8–K.[9]

As discussed in more detail below, in April 2010, the Commission proposed changes to the ongoing reporting requirements for ABS issuers that would include, among other things, loan-level information in the distribution reports and revised triggering events for current reports.

Prior to enactment of the Act, Exchange Act Section 15(d) provided that for issuers without a class of securities registered under the Exchange Act the duty to file ongoing reports is automatically suspended as to any fiscal year, other than the fiscal year within which the registration statement for the securities became effective, if the securities of each class to which the registration statement relates are held of record by less than three hundred persons. As a result, the reporting obligations of ABS issuers, other than those with master trust structures,[10] were generally suspended after the ABS issuer filed one annual report on Form 10–K because the number of record holders was below, often significantly below, the 300 record holder threshold.[11]

ABS offerings are typically registered on shelf registration statements and each ABS offering is typically sold in a separate "takedown" off of the shelf. In 2004, the Commission adopted Exchange Act Rule 15d–22, relating to ABS reporting under Exchange Act Section 15(d).[12] Exchange Act Rule

[1] 17 CFR 240.12h–3 and 17 CFR 240.15d–22.

[2] 17 CFR 249.323.

[3] 15 U.S.C. 78a *et seq.*

[4] Public Law 111–203 (July 21, 2010).

[5] 15 U.S.C. 78o(d).

[6] 15 U.S.C. 77a *et seq.*

[7] 17 CFR 249.310.

[8] 17 CFR 249.312.

[9] 17 CFR 249.308.

[10] In a securitization using a master trust structure, the ABS transaction contemplates future issuances of ABS backed by the same, but expanded, asset pool that consists of revolving assets. Pre-existing and newly issued securities would therefore be backed by the same expanded asset pool. Thus, given their continued issuance, master trust ABS issuers typically continue to report, even after the first annual report is filed.

[11] One source noted that in a survey of 100 randomly selected asset-backed transactions, the number of record holders provided in reports on Form 15 ranged from two to more than 70. The survey did not consider beneficial owner numbers. *See* Committee on Capital Markets Regulation, *The Global Financial Crisis: A Plan for Regulatory Reform*, May 2009, at fn. 349.

[12] *See* Asset-Backed Securities, Release No. 33–8518 (Dec. 22, 2004) [70 FR 1506] ("2004 ABS Adopting Release").

15d–22(b) codified the staff position that the starting and suspension dates for any reporting obligation with respect to a takedown of ABS is determined separately for each takedown. Exchange Act Rule 15d–22 also clarified that a new takedown for a new ABS offering off the same shelf registration statement did not necessitate continued reporting for a class of securities from a prior takedown that was otherwise eligible to suspend reporting.

Prior to enactment of the Act, in April of 2010, we proposed rules that would revise the disclosure, reporting and offering process for ABS (the "2010 ABS Proposing Release").[13] Among other things, the 2010 ABS Proposing Release proposed to replace the investment grade ratings conditions to ABS shelf eligibility with four new eligibility conditions. One of the proposed new conditions would require an ABS issuer to undertake to file the same Exchange Act reports with the Commission as would be required by Section 15(d) of the Exchange Act and rules thereunder, if the issuer were subject to the reporting requirements of that section.[14] Before we acted on that proposal, the Act rendered that proposed shelf eligibility condition unnecessary by removing any class of ABS from the automatic suspension provided in Exchange Act Section 15(d) by inserting the phrase, "other than any class of asset-backed securities." Consequently, ABS issuers no longer automatically suspend reporting under Exchange Act Section 15(d). Instead, the Act granted the Commission authority to "provide for the suspension or termination of the duty to file under this subsection for any class of asset-backed security, on such terms and conditions and for such period or periods as the Commission deems necessary or appropriate in the public interest or for the protection of investors."[15]

As noted, by adding the exception for ABS, the amendment removed the automatic suspension for any class of ABS. The effect is that the Exchange Act Section 15(d) reporting obligation now requires ongoing reporting for ABS issuers. As a result, we are proposing to update our rules consistent with the changes to Exchange Act Section 15(d), as amended by Section 942(a) of the Act.[16] Our proposal to amend Exchange Act 15d–22 is described below. In addition, because ABS issuers no longer automatically suspend reporting absent Commission action, we are proposing relief where there are no longer ABS of a class that were sold in a registered transaction held by non-affiliates of the depositor.

II. Discussion of Proposals

As indicated above, Exchange Act Section 15(d), as amended by the Act, establishes an ongoing reporting obligation for each class of ABS for which an issuer has filed a registration statement which has become effective pursuant to the Securities Act. Exchange Act Section 15(d) also grants the Commission authority to provide for the suspension or termination of the duty to file. We believe that post-issuance reporting of information by an ABS issuer provides investors and the markets with transparency regarding many aspects of the ongoing performance of the securities and the servicer in complying with servicing criteria, among other things, and further believe this transparency is important for investors and the market in evaluating transaction performance and making ongoing investment decisions. We recognize, however, the costs imposed by ongoing reporting obligations and are proposing limited relief from these reporting obligations that we believe is appropriate in the public interest and consistent with the protection of investors. In addition, we are proposing rule and form amendments to update our rules relating to ABS takedowns under a shelf registration statement.

A. Suspension of Exchange Act Section 15(d) Reporting Obligation

We are proposing in new Exchange Act Rule 15d–22(b) to permit suspension of the reporting obligations for a given class of ABS pursuant to Exchange Act Section 15(d) for any fiscal year, other than the fiscal year within which the registration statement became effective, if, at the beginning of the fiscal year, there are no longer ABS of the class that were sold in a registered transaction held by non-affiliates of the depositor.[17] As revised by the Act, Exchange Act Section 15(d) no longer provides for the automatic suspension of the duty to file periodic and other reports for issuers of a class of ABS. Without action by the Commission, ABS issuers that have filed a registration statement that has become effective pursuant to the Securities Act or that have conducted a takedown off of a shelf registration statement as described above, would be obligated to continue to file such reports for the life of the security.

In the 2010 ABS Proposing Release, we noted the importance to investors of post-issuance reporting of information regarding an ABS transaction in understanding transaction performance and in making ongoing investment decisions.[18] We also believe, however, that there is a point at which the benefits to investors and the market of reporting significantly diminish, such as the limited benefit provided by reporting of an issuer that has no non-affiliated holders of its securities. Where an issuer has only affiliated holders of its securities, there is no public market for the securities and the affiliated holders typically have access to comparable information to that provided by public reports. In addition, preparation of reports under such circumstances would add to the cost of offering and maintaining the ABS and therefore to the cost of capital formation.

In the 2010 ABS Proposing Release we sought to balance the value of the information to investors and the market with the burden to issuers of preparing the reports. We proposed in the 2010 ABS Proposing Release to require, as a condition to ABS shelf eligibility, that the issuer undertake to file reports providing disclosure as would be required pursuant to Exchange Act Section 15(d) and the rules thereunder as long as non-affiliates of the depositor hold any of the issuer's securities that were sold in a registered transaction.[19]

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[13] *See* Asset-Backed Securities, Release No. 33–9117 (April 7, 2010) [75 FR 23328].

[14] *See* proposed Item 512(a)(7)(ii) of Regulation S–K from the 2010 ABS Proposing Release. The issuer's reporting obligation in the proposed undertaking would have extended as long as non-affiliates of the depositor hold any of the issuer's securities that were sold in registered transactions.

[15] 15 U.S.C. 78o(d)(2).

[16] One comment letter relating to the Commission's 2010 ABS Proposing Release argues that Rule 15d–22(b) specifically provides suspension from reporting and is available to automatically suspend reporting obligations despite enactment of Section 942 of the Act. *See* comment letter from the American Securitization Forum to the 2010 ABS Proposing Release available on-line at *http://sec.gov/comments/s7-08-10/s70810-70.pdf*. *See also* comment letter from the American Securitization Forum on Implementing the Dodd-Frank Wall Street Reform and Consumer Protection Act available on-line at *http://www.sec.gov/comments/df-title-ix/asset-backed-securities/assetbackedsecurities-10.pdf*. However, as explained in the 2004 ABS Adopting Release, Rule 15d–22(b) clarifies that the starting and suspension for any reporting obligation with regard to a takedown of ABS is determined separately for each takedown. *See supra* note 12 at 1563. It did not, and should not be read, to provide an independent basis for suspending the reporting obligation of Exchange Act Section 15(d).

[17] We are also proposing to amend Form 15 to provide a checkbox referring to proposed Rule 15d–22(b).

[18] See 2010 ABS Proposing Release, *supra* note 13, at 23347.

[19] *Id.* In light of the Act, we are no longer pursuing our proposal relating to ongoing reporting as a condition to ABS shelf eligibility. However, we

While our proposal to require ongoing reporting as a condition to ABS shelf eligibility and the comments we received on that proposal are informative, the Act no longer provides for the automatic suspension of the duty to file periodic and other reports for issuers of a class of ABS.

We believe that the limited benefits of ongoing reporting to investors and the market where there are only affiliated holders of the ABS would not justify the burden of reporting by issuers. Consequently, we are proposing new Exchange Act Rule 15d–22(b) which would provide that the reporting obligation regarding any class of ABS is suspended for any fiscal year, other than the fiscal year within which the registration statement became effective, if, at the beginning of the fiscal year there are no longer any securities of such class held by non-affiliates of the depositor that were sold in the registered transaction. We are also proposing to amend Form 15 to add a checkbox for ABS issuers to indicate that they are relying on proposed Exchange Act Rule 15d–22(b) to suspend their reporting obligation to alert the market and the Commission of the change in reporting status.

Request for Comment

- Is it appropriate to suspend the Exchange Act Section 15(d) reporting obligation regarding a class of ABS for any fiscal year, other than the fiscal year within which the registration statement became effective, if, at the beginning of the fiscal year there are no longer any securities of such class held by non-affiliates of the depositor that were sold in a registered transaction?
- Should we instead consider allowing suspension of the reporting obligation dependent on a limited number of non-affiliates of the depositor holding the securities? If so, what would be an appropriate number and why? Please provide data establishing a basis for such a limit.
- If an issuer is unable to locate a security holder in order to provide information and make distributions to that security holder, such that the distributions are returned to the issuer without payment to the unknown security holder and the issuer or its agent has attempted to notify the unknown security holder within seven months of the failed distribution, should we allow the issuer not to count such security holders when determining the number of non-affiliates of the depositor that hold its securities? Should we allow an issuer to suspend the Exchange Act Section 15(d) reporting obligation regarding a class of ABS if, at the beginning of the fiscal year there are no longer any securities of such class, other than securities held by such lost or missing security holders, held by non-affiliates of the depositor that were sold in a registered transaction?
- Should we allow an issuer to suspend the Exchange Act Section 15(d) reporting obligation regarding a class of ABS if that issuer has effected legal or covenant defeasance of such class? Why or why not? Is legal or covenant defeasance typically provided for in ABS indentures or other governing instruments? Is legal or covenant defeasance effected with any meaningful frequency in the ABS market? Are there certain asset classes or tranches where it is more or less common? Please provide data to support your conclusions.
- Is there another standard, such as one relying on the percentage of pool assets remaining or the percentage of pool assets held by non-affiliates of the depositor, that would be more appropriate? Should we permit suspension based on a mandatory period of time since the registered offering? If so, how long would be appropriate? Three years? Five years? Should the amount of time depend on the asset class?

B. Revisions to Existing Exchange Act Rule Provisions

In light of the statutory changes to Exchange Act Section 15(d), we are proposing to update Exchange Act Rule 15d–22 to indicate when annual and other reports need to be filed and when starting and suspension dates are determined with respect to a takedown. We are also proposing to amend Exchange Act Rule 12h–3(b)(1) to add the language ", other than any class of asset-backed securities," to conform the rule to the language of amended Exchange Act Section 15(d) and to add a clarifying note.

Exchange Act Rule 15d–22 currently provides that: (1) No annual or other reports need be filed pursuant to Exchange Act Section 15(d) for ABS until the first bona fide sale in a takedown of securities under the registration statement; and (2) the starting and suspension dates for any reporting obligation with respect to a takedown of ABS is determined separately for each takedown.

We are proposing to amend Exchange Act Rule 15d–22. The revised rule would retain the approach that the Exchange Act Section 15(d) reporting obligation relates to each separate takedown in current Exchange Act Rules 15d–22(a) and 15d–22(b) in a new Exchange Act Rule 15d–22(a). Proposed Rule 15d–22(a)(1) tracks the language in current Exchange Act Rule 15d–22(a) providing that with respect to an offering of ABS sold off the shelf pursuant to Securities Act Rule 415(a)(1)(x),[20] the requirement to file annual and other reports pursuant to Exchange Act Section 15(d) regarding a class of securities commences upon the first bona fide sale in a takedown of securities under the registration statement. Proposed Exchange Act Rule 15d–22(a)(2) would restate the concept contained in current Exchange Act Rule 15d–22(b) that the requirement to file annual and other reports pursuant to Exchange Act Section 15(d) regarding a class of securities is determined separately for each takedown of securities under the registration statement. Exchange Act Rule 15d–22(b) currently does this by relying on language relating to when an issuer may suspend reporting under Exchange Act Section 15(d). Because the Act eliminated the automatic suspension of reporting for ABS issuers, we are proposing to delete current Exchange Act Rule 15d–22(b) and replace it with new Exchange Act Rule 15d–22(a)(2).[21]

found comments on the proposed shelf eligibility condition helpful in preparing proposed Exchange Act Rule 15d–22. Some commentators supported the proposed ongoing reporting requirements. See, for example, comment letters to the 2010 ABS Proposing Release from American Bar Association, Council of Institutional Investors, Metropolitan Life Insurance Company, and Prudential Investment Management, Inc. One commentator, the Council of Institutional Investors, asserted that transparency is related to asset quality and that ongoing reporting would facilitate due diligence by investors. Other commentators noted the burdens of reporting and suggested alternatives to filing reports with the Commission as a condition to shelf eligibility. *See,* for example, comment letters to the 2010 ABS Proposing Release from Bank of America Corporation (suggesting automatic suspension be continued but on a more delayed basis such as three years), Cleary Gottlieb Steen & Hamilton (suggesting that investors be permitted to opt the class of ABS out of reporting), and Kutak Rock LLP (suggesting a higher threshold below which ABS issuers could suspend reporting pursuant to Section 15(d) such as 50 investors or $3 million). Comments on the 2010 ABS Proposing Release are available on-line at *http://www.sec.gov/comments/s7-08-10/s70810.shtml.*

[20] 17 CFR 230.415(a)(1)(x).

[21] Current Exchange Act Rule 15d–22(b) states: "Regarding any class of asset-backed securities in a takedown off of a registration statement pursuant to § 230.415(a)(1)(x) of this chapter, no annual and other reports need be filed pursuant to section 15(d) of the Act regarding such class of securities as to any fiscal year, other than the fiscal year within which the takedown occurred, if at the beginning of such fiscal year the securities of each class In the takedown are held of record by less than three hundred persons." As is currently the case, proposed Rule 15d–22(a)(2) would only require a registrant to file reports after a takedown of securities under the registration statement. If the registrant has filed a registration statement but has not conducted a takedown, the registrant would not

Continued

As proposed, Exchange Act Rule 15d–22(c), which states that Exchange Act Rule 15d–22 does not affect other reporting obligations applicable to any class of securities from additional takedowns or reporting obligations that may be applicable pursuant to Exchange Act Section 12, such as for an ABS issuer's non-ABS securities, would remain substantially unchanged, except for minor revisions to reflect the amendments discussed above. We believe it is appropriate to continue to apply this provision to all of proposed Exchange Act Rule 15d–22 to make clear that other reporting obligations applicable to a class of securities are not affected by the rules.

Finally, we are proposing to amend Exchange Act Rule 12h–3(b)(1) to exclude ABS from the classes of securities eligible for suspension. Exchange Act Rule 12h–3(b) currently designates the classes of securities eligible for suspension of the duty to file reports under Exchange Act Section 15(d). The Act explicitly removed "any class of asset-backed security" from the automatic suspension of Exchange Act Section 15(d). Since the language of Exchange Act Rule 12h–3 tracks the language of the Exchange Act, we are proposing to add the language from amended Exchange Act Section 15(d) to our rule. We are also proposing to add a note to direct ABS issuers to Exchange Act Rule 15d–22 for the requirements regarding suspension of reporting for ABS.

Request for Comment

- Does proposed Exchange Act Rule 15d–22(a) effectively provide guidance relating to when an ABS issuer is required to file annual and other reports pursuant to Section 15(d) of the Exchange Act regarding a class of securities upon a takedown of securities from a shelf registration statement? Are there other changes that we should make to the Commission guidance relating to the application of Exchange Act Section 15(d) to registered ABS?
- Do our proposed revisions to Exchange Act Rule 12h–3 appropriately modify the rule to give effect to the statutory change and provide clarity to ABS issuers regarding the reporting obligations and where to refer relating to the ability to suspend reporting?

be required to file annual and other reports related to those securities.

III. Reporting Obligation of ABS Whose Exchange Act Section 15(d) Obligation Was Suspended Prior to Enactment of the Act

A suspension from reporting under Exchange Act Section 15(d) is applicable under the statute only for a year and needs to be reconsidered each subsequent year:

> The duty to file under this subsection shall also be automatically suspended *as to any fiscal year*, other than the fiscal year within which such registration statement became effective, if, at the beginning of *such fiscal year*, the securities of each class, other than any class of asset-backed securities, to which the registration statement relates are held of record by less than three hundred persons.[22] (emphasis added)

Consequently, once an issuer has registered an offering under the Securities Act it needs to consider at the beginning of each fiscal year whether it has a reporting obligation under Exchange Act Section 15(d). This is the case even if an issuer has previously been eligible to suspend reporting under Exchange Act Section 15(d). As a result, the revision to Exchange Act Section 15(d) results in a "springing" Section 15(d) reporting obligation for ABS issuers on the first day of their next fiscal year since, by its terms, Section 15(d) as amended, does not provide for the suspension of reporting for ABS, unless the Commission exercises its authority to provide for a suspension or termination of such reporting. We note that unlike corporate issuers that can generate new revenue and actively manage their assets and business, ABS issuers by definition are a discrete pool of self-liquidating assets. One commentator has noted, among other things, that historically the transaction documents have not contained provisions necessary to support an ongoing reporting obligation, or provide for the funds to cover the costs of taking steps to recommence reporting.[23] While the transaction documents may not provide for recommencing reporting, we note that most transaction documents require ABS issuers to provide periodic distribution reports to the trustee or security holders in order to provide information for investors for the life of the securitization. Taking into account all of these factors, the staff of the Division of Corporation Finance has issued a no-action letter applicable to all ABS issuers whose reporting obligations had been suspended prior to the date of enactment of the Act that states that, provided the issuer continues complying with requirements under the transaction agreements to make ongoing information regarding the ABS and the related pool assets available to security holders in the manner and to the extent required under those transaction agreements, the Division would not recommend enforcement action if the issuer continues to determine its reporting requirements based on the standards set forth in Section 15(d) of the Exchange Act immediately prior to enactment of the Act.[24] The letter also requires as an additional condition to the no-action position that the issuer retain the information for at least five years after the ABS are no longer outstanding and provide copies of such information to the Commission or its staff upon request.

[22] 15 U.S.C. 78o(d). We note that our staff has previously stated in this regard, "If on the first day of any subsequent fiscal year the thresholds in Rule 12h-3(b)(1) are exceeded, the suspension of reporting obligations under Section 15(d) will lapse, and the issuer would be required to resume periodic and current reporting under Section 15(d) in the manner specified in Rule 12h-3(e)." *See* Staff Legal Bulletin No. 18 (Mar. 15, 2010), fn. 7.

[23] *See* comment letters from the American Securitization Forum *supra* note 16.

IV. General Request for Comments

We request comment on the specific issues we discuss in this release, and on any other approaches or issues that we should consider in connection with the proposed amendments. We seek comment from any interested persons, including investors, securitizers, ABS issuers, sponsors, originators, servicers, trustees, disseminators of EDGAR data, industry analysts, EDGAR filing agents, and any other members of the public.

V. Paperwork Reduction Act

A. Background

Certain provisions of the disclosure rules and forms applicable to ABS issuers contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[25] While the amendments proposed today do not alter the disclosure requirements set forth in these rules and forms, the amendment to Exchange Act Section 15(d) effected by the Act will increase the number of filings made pursuant to these rules and forms. Accordingly, the Commission is submitting revised burden estimates for certain of these collections of information to the Office of Management and Budget ("OMB") for review in accordance with the PRA.[26] An agency may not conduct or sponsor, and a person is not required to comply with, a collection of information unless

[24] *See* Staff no-action letter to American Securitization Forum (January 6, 2011).

[25] 44 U.S.C. 3501 *et seq.*

[26] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

it displays a currently valid control number. The titles for the affected collections of information are:

(1) "Form 10–K" (OMB Control No. 3235–0063);

(2) "Form 10–D" (OMB Control No. 3235–0604);

(3) "Form 8–K" (OMB Control No. 3235–0288); and

(4) "Form 15" (OMB Control No. 3235–0167).[27]

The forms were adopted under the Exchange Act and set forth the disclosure requirements for periodic and current reports filed with respect to ABS and other types of securities to inform investors.

Compliance with the information collections is mandatory. Responses to the information collections are not kept confidential and there is no mandatory retention period for the collections of information.

B. Revisions to PRA Reporting and Cost Burden Estimates

Our PRA burden estimate for Form 10–K, Form 8–K and Form 15 is based on an average of the time and cost incurred by all types of public companies, not just ABS issuers, to prepare the collection of information. Form 10–D is a form that is only prepared and filed by ABS issuers. Form 10–D is filed within 15 days of each required distribution date on the ABS, as specified in the governing documents for such securities, containing periodic distribution and pool performance information.

Our PRA burden estimates for the collections of information are based on information that we receive on entities assigned to Standard Industrial Classification Code 6189, the code used by ABS issuers, as well as information from outside data sources.[28] When possible, we base our estimates on an average of the data that we have available for years 2004 through 2009. In some cases, our estimates for the number of ABS issuers that file Form 10–D with the Commission are based on an average of the number of ABS offerings in 2006 through 2009.[29]

1. Statutory Effects

Prior to the amendment to Exchange Act Section 15(d), except for master trust issuers, the requirement to file Form 10–K for ABS issuers was typically suspended after the year of initial issuance because the issuer had fewer than 300 security holders of record. The Act amended Exchange Act Section 15(d) to remove issuers of a class of ABS from automatic suspension of the filing requirement. Subsequent to the enactment of the Act, the number of Forms 10–K and 10–D filed by ABS issuers is expected to increase each year by the number of ABS registered offerings and the number of Forms 15 filed by ABS issuers is expected to decrease by a similar number. The yearly average of ABS registered offerings with the Commission over the period from 2004 to 2009 was 958. As a result, for PRA purposes, we estimate an annual increase in Form 10–K filings of 958 filings[30] and corresponding increases in Form 10–D filings of 5,748 filings and Form 8–K filings of 1437.[31] Concurrently, for PRA purposes, we estimate an annual decrease in Form 15 filings of 958 filings.[32]

We estimate that, for Exchange Act reports generally, 75% of the burden of preparation is carried by the company internally and that 25% of the burden is carried by outside professionals retained by the registrant at an average cost of $400 per hour. Consistent with our estimates in 2004, we estimate that 120 hours would be needed to complete and file a Form 10–K for an ABS issuer, 30 hours would be needed to complete and file a Form 10–D for an ABS issuer, 5 hours would be needed to complete and file a Form 8–K for an ABS issuer, and 1.5 hours would be needed to complete and file a Form 15 for an ABS issuer.[33]

In summation, we estimate, for PRA purposes, increases of 114,960 total burden hours for Form 10–K (958 Forms 10–K times 120 burden hours per filing), 172,440 total burden hours for Form 10–D (5,748 Forms 10–D times 30 burden hours per filing), and 7,185 total burden hours for Form 8–K (1,437 Forms 8–K times 5 burden hours per filing), as well as a decrease of 1,437 total burden hours for Form 15 (958 Forms 15 times 1.5 burden hours per filing) as a result of the statutory changes to Exchange Act Section 15(d).[34] We allocate 75% of those hours (an increase of 86,220 hours for Form 10–K, 129,330 hours for Form 10–D, and 5,389 hours for Form 8–K) to internal burden and the remaining 25% to external costs using a rate of $400 per hour (an increase of $11,496,000 for Form 10–K, $17,244,000 for Form 10–D and $718,500 for Form 8–K).

2. Effects on Burden Estimates of the Proposed Rules

We are proposing to permit ABS issuers to suspend their reporting obligation with respect to a class of ABS for any fiscal year, other than the fiscal year within which the registration statement became effective, if, at the beginning of the fiscal year non-affiliates no longer hold any of the issuer's securities of that class that were sold in registered transactions. While we expect that issuers will be able to suspend their reporting obligations in the future, based on average expected deal life data, for purposes of the PRA, we estimate that the proposal will not affect our PRA estimates over the next three years.[35] We are also proposing to amend Exchange Act Rule 15d–22 relating to reporting and shelf registration and Exchange Act Rule 12h–3 to conform the rule to Exchange Act Section 15(d). We do not believe that these proposals will affect our PRA estimates.

[27] We are proposing to add a new check box to Form 15 (OMB Control No. 3235–0167) to allow ABS issuers to indicate that they are relying on proposed Rule 15d–22(b) to suspend their reporting obligation. We do not believe that the proposed changes will affect the burden estimates for Form 15.

[28] We rely on two outside sources of ABS issuance data. We use the ABS issuance data from Asset-Backed Alert on the initial terms of offerings, and we supplement that data with information from Securities Data Corporation (SDC).

[29] Form 10–D was not implemented until 2006. Before implementation of Form 10–D, ABS issuers often filed their distribution reports under cover of Form 8–K.

[30] *See* the 2010 ABS Proposing Release, *supra* note 13, at 23402. In order to estimate the number of Forms 10–K filed by ABS issuers for PRA purposes, we average the number of Forms 10–K over three years. In the first year after implementation, we use 958 as an estimate for the number of Forms 10–K we expect to receive. In the second year, we increase our estimate of the number of Forms 10–K expected by 958 to a total of 1,916 and in the third year, the addition of another 958 brings the total to 2,874. The average number of Forms 10–K over three years would, therefore, be 1,916. As a result, for PRA purposes, we estimate an increase in Form 10–K filings of 958 filings. These estimates assume that the market for ABS returns to historic levels.

[31] We are estimating that each ABS issuer would have an annual Form 10–K filing, six Form 10–D filings and 1.5 8–K filings consistent with our estimates in the 2010 ABS Proposing Release. *See* 2010 ABS Proposing Release, *supra* note 13, at n. 521.

[32] We assume that in any given year the issuers of all 958 registered ABS issued in the prior year would have suspended reporting using Form 15. The average number of Form 15 over three years would, therefore, have been 958. After the implementation of the Act, Form 15 will no longer be used by these ABS issuers as it was in the past. As a result, for the purposes of PRA, we estimate a decrease in Form 15 filings of 958.

[33] *See* 2010 ABS Proposing Release, *supra* note 13, at 23402–23403.

[34] We allocate all of the burden for Form 15 filings to internal burden hours.

[35] Since historical data on the numbers of classes of ABS that reduce their non-affiliated holders to zero is not generally available, we are using statistics relating to average expected deal life to establish our PRA estimate. Statistics compiled from SDC Platinum suggest that the average expected deal life of a class of ABS is over 5 years.

3. Summary of Proposed Changes to Annual Burden Compliance in Collection of Information

Table 1 illustrates the changes in annual compliance burden in the collection of information in hours and costs for existing reports for ABS issuers.

Form	Current annual responses	Proposed annual responses	Current burden hours	Decrease or increase in burden hours	Proposed burden hours	Current professional costs	Decrease or increase in professional costs	Proposed professional costs
10–K	13,545	14,503	21,363,548	86,220	21,449,768	2,848,473,000	11,496,000	2,859,969,000
10–D	10,000	15,478	225,000	129,330	354,330	30,000,000	17,244,000	47,244,000
8–K	115,795	117,232	493,436	5,389	498,825	54,212,000	718,500	54,930,500
15	3,000	2,042	4,500	(1,437)	3,063	0	0	0

4. Solicitation of Comments

We request comments in order to evaluate: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information would have practical utility; (2) the accuracy of our estimate of the burden of the proposed collection of information; (3) whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (4) whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.[36]

Any member of the public may direct to us any comments concerning the accuracy of these burden estimates and any suggestions for reducing these burdens. Persons submitting comments on the collection of information requirements should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should send a copy to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090, with reference to File No. S7–02–11. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–02–11, and be submitted to the Securities and Exchange Commission, Office of Investor Education and Advocacy, 100 F Street, NE., Washington, DC 20549–0213. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

[36] We request comment pursuant to 44 U.S.C. 3506(c)(2)(B).

VI. Benefit-Cost Analysis

The Exchange Act establishes an ongoing reporting obligation for each class of ABS for which an issuer has filed a registration statement that has become effective pursuant to the Securities Act and grants the Commission authority to provide for the suspension or termination of the duty to file. In light of the changes made to Exchange Act Section 15(d) in the Act, the Commission is proposing to amend Exchange Act Rule 12h–3 and 15d–22, and to provide for the suspension of the duty to file for certain issuers as discussed in this release.[37]

We believe that reporting of the ongoing performance of the ABS is useful to investors and the market by providing readily accessible information upon which investors may evaluate performance and make ongoing investment decisions. We also recognize, however, that there is a point at which the benefits to investors and the market of reporting diminish. In proposing to provide for the suspension of the duty to file for ABS issuers when non-affiliated holders no longer hold securities in the issuer, we have sought to balance the value of the information to investors and the market with the burden on the issuers of preparing the reports. We further recognize that there are other alternatives for determining when the suspension of the duty to file is appropriate and have sought comment on that issue in this release.

We are sensitive to benefits and costs of the proposed rules, if adopted. The discussion below focuses on the benefits and costs of the decisions made by the Commission in the exercise of the new exemptive authority provided by the Act. We request that commentators provide their views along with supporting data as to the benefits and costs of the proposed amendments.

[37] The proposed amendments to Exchange Act Rules 12h–3 and 15d–22 do not substantively alter the current requirements and should help issuers comply with their obligations and avoid confusion.

A. Benefits

The proposals would allow an issuer to suspend reporting under certain circumstances and update certain provisions relating to reporting obligations under a shelf registration statement. The Act amended Exchange Act Section 15(d) to eliminate the automatic suspension of the duty to file ongoing Exchange Act reports for ABS issuers and granted the Commission authority to issue rules providing for the suspension or termination of such duty. The proposals would permit issuers to suspend their reporting obligation under Exchange Act Section 15(d) for any fiscal year, other than the fiscal year within which the registration statement became effective, if, at the beginning of the fiscal year there are no longer ABS of the class that were sold in a registration statement held by non-affiliates of the depositor. Permitting such issuers to suspend reporting would allow those issuers to avoid the costs of preparing and filing annual and periodic reports with the Commission when non-affiliates of the depositor no longer hold any outstanding classes of the securities sold in registered transactions.

B. Costs

In revising Exchange Act Section 15(d), Congress exhibited an intent to increase the continued reporting by ABS issuers, but gave the Commission authority to place limitations on that reporting in the public interest. The Commission is exercising this authority and proposing a rule which would allow ABS issuers to suspend their reporting obligation under certain limited conditions. Permitting the suspension of reporting would limit the ability of market participants and

observers to access and review information for those ABS that suspend reporting. We believe that this cost would be mitigated, since affiliates would generally be able to receive relevant information because of their relationship with the depositor. Thus, only non-holders of a particular ABS would be affected. Furthermore, the utility of the information to market participants and observers would be limited since ABS owned solely by affiliates would generally not have a public market. We recognize that there is an additional cost to preparing ongoing disclosure for registered transactions relative to issuing in the private markets. Issuers' willingness to issue registered ABS may be affected by the proposed threshold at which issuers may suspend their reporting obligations under Section 15(d), or another suspension threshold that we may adopt.

C. Request for Comment

We seek comments and empirical data on all aspects of this Benefit-Cost Analysis including identification and quantification of any additional benefits and costs.

VII. Consideration of Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

Section 23(a) of the Exchange Act [38] requires the Commission, when making rules and regulations under the Exchange Act, to consider the impact a new rule would have on competition. Section 23(a)(2) prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Section 3(f) of the Exchange Act [39] requires the Commission, when engaging in rulemaking that requires it to consider whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action would promote efficiency, competition, and capital formation.

The proposed amendments update the reporting requirements for takedowns from shelf registration in Exchange Act Rule 15d–22 and provide for the suspension of the duty to file for certain ABS issuers as discussed in this release. The proposal to allow ABS issuers without non-affiliated holders to suspend their duty to file would decrease transparency regarding those issuers, to the extent that non-affiliated investors and the market use that information. However, the suspension of the duty to file would reduce compliance costs for issuers which could increase efficiency and facilitate capital formation.

The Act eliminated the ability of ABS issuers to suspend their duty to file ongoing reports under Exchange Act Section 15(d). An inability to suspend the duty to file may encourage some issuers to offer ABS privately or not to issue ABS at all, rather than registering those ABS and incurring the ongoing reporting costs. If issuers register fewer ABS, this would reduce liquidity and decrease transparency in the ABS market. The current proposal that would allow ABS issuers under limited circumstances to suspend their duty to file and provide issuers certainty regarding when they may suspend reporting may encourage some ABS issuers to register ABS and offer ABS in the public markets, which would increase liquidity and transparency and facilitate capital formation.

The clarifications provided in Exchange Act Rule 15d–22 and 12h–3 may have a beneficial effect on the efficiency of managing ABS offerings, especially takedowns from ABS shelf registration, by providing issuers with a better understanding of their Exchange Act reporting obligations and facilitating compliance.

We do not believe the proposed amendments would have an impact or burden on competition. We request comment on whether the proposed amendments, if adopted, would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Commentators are requested to provide empirical data and other factual support for their views if possible. We request comment on whether the proposed amendments, if adopted, would promote efficiency, competition, and capital formation. Commentators are requested to provide empirical data and other factual support for their views if possible.

VIII. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[40] a rule is "major" if it has resulted, or is likely to result in:

- An annual effect on the U.S. economy of $100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment, or innovation.

We request comment on whether our proposed amendments would be a "major rule" for purposes of the Small Business Regulatory Enforcement Fairness Act. We solicit comment and empirical data on:

- The potential effect on the U.S. economy on an annual basis;
- Any potential increase in costs or prices for consumers or individual industries; and
- Any potential effect on competition, investment, or innovation.

IX. Regulatory Flexibility Act Certification

The Commission hereby certifies pursuant to 5 U.S.C. 605(b) that the proposals contained in this release, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposals relate to the ongoing reporting requirements for ABS issuers under the Exchange Act. Exchange Act Rule 0–10(a) [41] defines an issuer, other than an investment company, to be a "small business" or "small organization" if it had total assets of $5 million or less on the last day of its most recent fiscal year. As the depositor and issuing entity are most often limited purpose entities in an ABS transaction, we focused on the sponsor in analyzing the potential impact of the proposals under the Regulatory Flexibility Act. Based on our data, we only found one sponsor that could meet the definition of a small broker-dealer for purposes of the Regulatory Flexibility Act.[42] Accordingly, the Commission does not believe that the proposals, if adopted, would have a significant economic impact on a substantial number of small entities.

X. Statutory Authority and Text of Proposed Rule and Form Amendments

We are proposing the amendments contained in this document under the authority set forth in Section 942 of the Act, and Sections 3(b), 12, 13, 15, 23(a), and 36 of the Exchange Act.

List of Subjects in 17 CFR Parts 240 and 249

Reporting and recordkeeping requirements, Securities.

For the reasons set out above, Title 17, Chapter II of the Code of Federal

[38] 15 U.S.C. 78w(a).

[39] 15 U.S.C. 78c(f).

[40] Public Law 104–121, Title II, 110 Stat. 857 (1996).

[41] 17 CFR 240.0–10(a).

[42] This is based on data from Asset-Backed Alert.

Regulations is proposed to be amended as follows:

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

1. The authority citation for part 240 continues to read as follows:

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

* * * * *

2. Amend § 240.12h–3 by:

a. In paragraph (b)(1) introductory text add ", other than any class of asset-backed securities," in the first sentence after "Any class of securities"; and

b. Adding a Note to paragraph (b).

The addition to read as follows:

§ 240.12h–3 Suspension of duty to file reports under section 15(d).

* * * * *

(b) * * *

Note to Paragraph (b): The suspension of classes of asset-backed securities is addressed in § 240.15d–22.

* * * * *

3. Revise § 240.15d–22 to read as follows:

§ 240.15d–22 Reporting regarding asset-backed securities under section 15(d) of the Act.

(a) With respect to an offering of asset-backed securities registered pursuant to § 230.415(a)(1)(x) of this chapter:

(1) Annual and other reports need not be filed pursuant to section 15(d) of the Act (15 U.S.C. 78o(d)) regarding any class of securities to which such registration statement relates until the first bona fide sale in a takedown of securities under the registration statement; and

(2) The starting and suspension dates for any reporting obligation under section 15(d) of the Act (15 U.S.C. 78o(d)) with respect to a takedown of any class of asset-backed securities is determined separately for each takedown of securities under the registration statement.

(b) The duty to file annual and other reports pursuant to section 15(d) of the Act (15 U.S.C. 78o(d)) regarding any class of asset-backed securities is suspended as to any fiscal year, other than the fiscal year within which the registration statement became effective, if, at the beginning of the fiscal year there are no longer any asset-backed securities of such class that were sold in a registered transaction held by non-affiliates of the depositor.

(c) This section does not affect any other reporting obligation applicable with respect to any classes of securities from additional takedowns under the same or different registration statements or any reporting obligation that may be applicable pursuant to section 12 of the Act (15 U.S.C. 78*l*).

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

4. The authority citation for part 249 continues to read as follows:

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

5. Amend Form 15 (referenced in § 249.323) by adding a checkbox referring to "Rule 15d–22(b)" after the checkbox referring to "Rule 15d–6".

Dated: January 6, 2011.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–416 Filed 1–11–11; 8:45 am]

BILLING CODE 8011–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 49, 60, 63, 75, 86, 89, 92, 94, 761, and 1065

[EPA–HQ–OPPT–2010–0518; FRL–8846–6]

RIN 2070–AJ51

Incorporation of Revised ASTM Standards That Provide Flexibility in the Use of Alternatives to Mercury-Containing Thermometers; Solicitation of Public Comment on the Required Use of Mercury-Containing Thermometers in EPA Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to incorporate the most recent versions of the American Society for Testing and Materials (ASTM) International standards (ASTM standards) into EPA regulations that provide flexibility to use alternatives to mercury-containing industrial thermometers. These proposed amendments will allow the use of such alternatives in certain limited field and laboratory applications previously impermissible as part of compliance with EPA regulations. Additionally, EPA is seeking public input on the need to address the remaining EPA regulations that incorporate by reference ASTM standards that do not allow the use of alternatives to mercury-containing industrial thermometers. EPA believes these embedded ASTM standards may unnecessarily impede the use of effective, comparable, and available mercury alternatives. Due to elemental mercury's high toxicity, EPA seeks to reduce potential mercury exposures to humans and the environment by reducing the overall use of mercury-containing products, including mercury-containing thermometers.

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

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2010–0518 by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery:* OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. *Attention:* Docket ID Number EPA–HQ–OPPT–2010–0518. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2010–0518. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line 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 regulations.gov or e-mail. The 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 regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the 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 docket index available at *http://www.regulations.gov*. 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 electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC), Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Robert Courtnage, National Program Chemicals Division (7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (202) 566–1081; *e-mail address: courtnage.robert@epa.gov.*

For general information contact: The TSCA–Hotline, ABVI–Goodwill, 422 South Clinton Ave., Rochester, NY 14620; *telephone number:* (202) 554–1404; *e-mail address: TSCA–Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you use mercury-containing thermometers in laboratories, for field analysis, or for other industrial applications. Potentially affected entities may include, but are not limited to:

- Testing Laboratories (NAICS code 541380).
- Petroleum Refineries (NAICS code 324110).
- Analytical Laboratory Instrument Manufacturing (NAICS code 334516).

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 technical person listed under **FOR FURTHER INFORMATION CONTACT.**

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through 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 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:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. 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.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What action is the Agency taking?

EPA's action is part of a more expansive Agency initiative to reduce the use of mercury-containing products to help prevent unnecessary human and environmental exposures to elemental mercury. EPA is proposing to incorporate revised ASTM standards that provide flexibility to use alternatives to mercury-containing industrial thermometers as part of complying with EPA regulatory requirements. Separately, EPA is soliciting responses from the public to specific questions (*see* Unit II.B.) relating to the need to revise the remaining ASTM standards embedded within EPA regulations that require the use of mercury-containing thermometers. EPA is specifically interested in public responses that address the benefits of providing flexibility to use mercury-containing thermometer alternatives and whether the remaining EPA regulations that require the use of mercury-containing thermometers could be revised or whether mercury-containing thermometers are needed for their accuracy and performance.

Mercury exposures can harm the brain, heart, kidneys, lungs, and immune system. Most human exposure to mercury is through the consumption of fish containing methylmercury. Exposure to methylmercury through ingestion can harm the normal development of the nervous system, resulting in learning disabilities. Elemental mercury and other forms of mercury from industrial sources are deposited from the air and are converted into methylmercury. Mercury exposures can also occur by the inhalation of elemental mercury from the breakage or improper disposal of mercury-containing products such as mercury-containing thermometers. Inhalation exposure of elemental mercury can lead to neurotoxic and developmental neurotoxic effects.

Following a thorough search, the Agency determined that certain EPA

regulations reference ASTM standards that require the use of mercury-containing thermometers for certain temperature measurement applications. EPA seeks to provide the regulated community with the flexibility to use mercury-free alternatives, where feasible, comparable, and available. This action proposes to update EPA regulations to incorporate three specific ASTM standards (D5865–10, D445–09, and D93–09) that allow for the use of alternatives to mercury-containing thermometers. EPA is proposing to update these ASTM standards where they are referenced in regulations pursuant to the Clean Air Act (CAA) and the Toxic Substances Control Act (TSCA) (certain sections of 40 CFR parts 49, 60, 63, 75, 86, 89, 92, 94, 761, and 1065). One of the incorporated ASTM standards (D5865–10) requires the use of a mercury-free device while the other two standards (D445–09 and D93–09) provide the flexibility to use alternatives to mercury-containing thermometers, but do not require their use. EPA is proposing to allow the use of the updated standard D5865–10 and the previous standards, D5856–01a, D5856–03a, and D5856–04 so that flexibility is given to use mercury-free thermometers, but not required. Although a first step, incorporating these current standards comprises only a small percentage of the ASTM standards referenced within EPA regulations that require the use of mercury-containing thermometers. Further revisions to other relevant ASTM standards would be necessary before EPA could provide more comprehensive flexibility. To facilitate the use of mercury alternatives, EPA encourages ASTM to expeditiously review and revise their standards that require the use of mercury-containing thermometers, particularly those currently embedded in EPA regulations.

As part of the Agency's mercury-product reduction effort, EPA believes it is important to remove unnecessary requirements to use mercury-containing thermometers where viable and comparable non-mercury substitutes exist. The National Institute of Standards and Technology (NIST), recognized experts in the field of thermometry, believe there are no fundamental barriers to the replacement of mercury-containing thermometers. Although perceived as superior in performance, mercury-containing thermometers have readily available and comparable alternatives such as platinum resistance thermometers, thermistors, thermocouples, and portable electronic thermometers (PETs). The use of thermometers in high temperature applications, such as the use of thermometers in autoclaves, traditionally provided significant challenges to the use of mercury-containing thermometer alternatives. However, the use of data-loggers in autoclave operations is an example of an emerging innovation to allow the viable use of mercury substitutes.

In addition to the embedded ASTM standards, certain EPA regulations directly require the use of mercury-containing thermometers. Most of these regulations are pursuant to CAA and will be addressed through a separate rulemaking currently pursued by EPA's Office of Air and Radiation. It is important to note that for ASTM standards contained within State implementation plan (SIP) approvals the Agency will need to address each ASTM standard separately after consultation with the States.

Additionally, analytical methods mandated under the Resource Conservation and Recovery Act (RCRA) that use mercury-containing thermometers as a Method Defined Parameter (MDP) will not be addressed in this proposed rule. While the Office of Solid Waste and Emergency Response (OSWER) Methods Innovation Rule (MIR) allows flexibility in RCRA-related sampling and analysis by removing unnecessary requirements in SW–846 Methods, the MIR does not allow for flexibility for test methods that have MDPs. EPA may address MDPs in future actions but not as part of this proposed rule.

B. What questions would EPA like the public to answer?

1. How can EPA provide additional flexibility in the use of mercury-free thermometers to comply with the Agency's relevant regulations?

2. Are requirements to use mercury-containing thermometers necessary for performance reasons or should flexibility be provided in most if not all measurement applications?

3. Does the use of data-loggers for temperature measurement in autoclaves provide a viable alternative to the use of mercury-containing thermometers?

4. What else can EPA do to help expedite the use of alternatives to mercury-containing thermometers where feasible, comparable, and available?

C. What is the Agency's authority for taking this action?

This proposed rule is issued under the Agency's authority pursuant to the CAA (42 U.S.C. 7401–7671q) and TSCA (15 U.S.C. 2601–2692).

III. Statutory and Executive Order Reviews

A. Regulatory Planning and Review

This is not a "significant regulatory action" under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Accordingly, this action was not submitted to the Office of Management and Budget (OMB) for review under Executive Order 12866.

B. Paperwork Reduction Act

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument, or form, if applicable. There are no information collection requirements in this proposed rule that require additional approval or consideration under PRA.

C. Small Entity Impacts

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that this action will not have a significant adverse economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. In making this determination, the impact of concern is any significant adverse economic impact on small entities because the primary purpose of regulatory flexibility analysis is to identify and address regulatory alternatives "which minimize any significant economic impact of the rule on small entities" (5 U.S.C. 603 and 604). Thus, an agency may certify under RFA when the rule relieves regulatory burden, or otherwise has no expected economic impact on small entities subject to the rule. EPA believes that this proposed rule does not have any adverse economic impact because it will provide flexibility by allowing the use mercury-free thermometers, without mandating their use. Of course, EPA welcomes comments on this conclusion.

D. Unfunded Mandates

This proposed 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 1 year. As such, EPA has determined that this proposed rule does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of sections 202, 203, 204, or 205 of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1531–1538).

E. Federalism

This action will not have federalism implications because it is not expected to have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Thus, Executive Order 13132 does not apply to this action.

F. Tribal Implications

This action will not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes, will not significantly or uniquely affect the communities of Indian Tribal governments, and does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000), do not apply to this action.

G. Children's Health Protection

EPA interprets Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks, nor is it an "economically significant regulatory action" as defined by Executive Order 12866.

H. Effect on Energy Supply, Distribution, or Use

This action is not a "significant energy action" as defined in Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001), because this action is not likely to affect the supply, distribution, or use of energy.

I. Technical Standards

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. ASTM standards constitute voluntary consensus standards and, as such, the NTTAA directly applies to this proposed rule. The NTTAA requires that EPA use voluntary consensus standards unless to do so would be inconsistent with applicable law or otherwise impractical. With this proposed rule, EPA is adding the most current versions of applicable ASTM standards that allow flexibility in the use of mercury-containing thermometers and in the spirit of the NTTAA plans to work closely with ASTM to address the remaining standards within EPA regulations that require the use of mercury-containing thermometers.

J. Environmental Justice

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

List of Subjects in 40 CFR Parts 49, 60, 63, 75, 86, 89, 92, 94, 761, and 1065

Environmental protection, temperature measurement, thermometers, and mercury.

Dated: January 3, 2011.

Lisa P. Jackson,

Administrator.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 49—[AMENDED]

1. The authority citation for part 49 continues to read as follows:

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

2. In § 49.123 revise the definition of "Heat input" in paragraph (a) and revise paragraph (e)(1)(v) to read as follows:

§ 49.123 General provisions.

(a) * * *

Heat input means the total gross calorific value [where gross calorific value is measured by ASTM Method D240–02, D1826–94 (Reapproved 2003), D5865–04, D5865–10, or E711–87 (Reapproved 2004) (incorporated by reference, see § 49.123(e))] of all fuels burned.

* * * * *

(e) * * *

(1) * * *

(v) ASTM D5865–04 or 10, Standard Test Method for Gross Calorific Value of Coal and Coke, IBR approved for § 49.123(a).

* * * * *

PART 60—[AMENDED]

3. The authority citation for part 60 continues to read as follows:

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

4. In § 60.17 revise paragraph (a)(78) to read as follows:

§ 60.17 Incorporations by reference.

* * * * *

(a) * * *

(78) ASTM D5865–98 or 10, Standard Test Method for Gross Calorific Value of Coal and Coke, IBR approved for § 60.45(f)(5)(ii), § 60.46(c)(2), and appendix A–7 to part 60, Method 19, section 12.5.2.1.3.

* * * * *

5. In Method 19 of appendix A–7 to part 60 revise section 12.5.2.1.3 to read as follows:

Appendix A–7 to Part 60—Test Methods 19 Through 25E

* * * * *

Method 19—Determination of Sulfur Dioxide Removal Efficiency and Particulate Matter, Sulfur Dioxide, and Nitrogen Oxide Emission Rates

* * * * *

12.5.2.1.3 Gross Sample Analysis. Use ASTM D 2013–72 or 86 to prepare the sample, ASTM D 3177– 75 or 89 or ASTM D 4239–85, 94, or 97 to determine sulfur content (%S), ASTM D 3173–73 or 87 to determine moisture content, and ASTM D 2015–77 (Reapproved 1978) or 96, D 3286–85 or 96, or D 5865–98 or 10 to determine gross calorific value (GCV) (all standards cited are incorporated by reference—see § 60.17 for acceptable versions of the standards) on a dry basis for each gross sample.

* * * * *

PART 63—[AMENDED]

6. The authority citation for part 63 continues to read as follows:

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

7. In § 63.14 revise paragraph (b)(48) to read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(b) * * *

(48) ASTM D5865–03a or 10, Standard Test Method for Gross Calorific Value of Coal and Coke, IBR approved for Table 6 to subpart DDDDD of this part.

* * * * *

8. In subpart DDDDD of part 63, Table 6 is amended by revising item d. under entries "1. Mercury * * *," "2. Total Selected metals * * *," and "3. Hydrogen chloride * * *" to read as follows:

* * * * *

TABLE 6 TO SUBPART DDDDD OF PART 63—FUEL ANALYSIS REQUIREMENTS

To conduct a fuel analysis for the following pollutant * * *	You must * * *	Using * * *
1. Mercury * * *.		
* *	* *	* * *
	d. Determine heat content of the fuel type * * *.	ASTM D5865–03a or D5865–10 (for coal) (IBR, see § 63.24(b)) or ASTM E711–87 (for biomass) (IBR, see § 63.14(b)) or equivalent.
* *	* *	* * *
2. Total Selected metals.		
* *	* *	* * *
	d. Determine heat content of the fuel type * * *.	ASTM D5865–03a or D5865–10 (for coal) (IBR, see § 63.14(b)) or ASTM E711–87 (1996) (for biomass) (IBR, see § 63.14(b)) or equivalent.
* *	* *	* * *
3. Hydrogen chloride * * *.		
* *	* *	* * *
	d. Determine heat content of the fuel type * * *.	ASTM D5865–03a or D5865–10 (for coal) (IBR, see § 63.14(b)) or ASTM E711–87 (1996) (for biomass) (IBR, see § 63.14(b)) or equivalent.
* *	* *	* * *

PART 75—[AMENDED]

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

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

10. In § 75.6 add new paragraph (a)(50) to read as follows:

§ 75.6 Incorporation by reference.

* * * * *

(a) * * *

(50) ASTM D5865–10, Standard Test Method for Gross Calorific Value of Coal and Coke, for appendices A, D, and F of this part.

* * * * *

11. In appendix A to part 75 revise paragraph (c) of section 2.1.1.1 to read as follows:

Appendix A to Part 75—Specifications and Test Procedures

* * * * *

2.1.1.1 Maximum Potential Concentration

* * * * *

(c) When performing fuel sampling to determine the MPC, use ASTM Methods: ASTM D3177–02 (Reapproved 2007), Standard Test Methods for Total Sulfur in the Analysis Sample of Coal and Coke; ASTM D4239–02, Standard Test Methods for Sulfur in the Analysis Sample of Coal and Coke Using High-Temperature Tube Furnace Combustion Methods; ASTM D4294–98, Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry; ASTM D1552–01, Standard Test Method for Sulfur in Petroleum Products (High-Temperature Method); ASTM D129–00, Standard Test Method for Sulfur in Petroleum Products (General Bomb Method); ASTM D2622–98, Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive Xray Fluorescence Spectrometry, for sulfur content of solid or liquid fuels; ASTM D3176–89 (Reapproved 2002), Standard Practice for Ultimate Analysis of Coal and Coke; ASTM D240–00, Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter; ASTM D5865–01a or ASTM D5865–10, Standard Test Method for Gross Calorific Value of Coal and Coke (all incorporated by reference under § 75.6).

* * * * *

12. In appendix D to part 75 revise section 2.2.7 to read as follows:

Appendix D to Part 75—Optional So_2 Emissions Data Protocol for Gas-Fired and Oil-Fired Units

* * * * *

2.2.7 Analyze oil samples to determine the heat content of the fuel. Determine oil heat content in accordance with ASTM D240–00, Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter, ASTM D4809–00, Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter (Precision Method), ASTM D5865–01a, or D5865–10, Standard Test Method for Gross Calorific Value of Coal and Coke (all incorporated by reference under § 75.6) or any other procedures listed in section 5.5 of appendix F of this part. Alternatively, the oil samples may be analyzed for heat content by any consensus standard method prescribed for the affected unit under part 60 of this chapter.

* * * * *

13. Appendix F to part 75 is amended as follows:

a. Revise sections 3.3.6.2 and 5.5.3.2.

b. Revise the expression "GCV_O" in paragraph (a) of section 5.5.1.

c. Revise the expression "GCV_C" in section 5.5.3.3 to read as follows:

Appendix F to Part 75—Conversion Procedures

* * * * *

3.3.6.2 GCV is the gross calorific value (Btu/lb) of the fuel combusted determined by ASTM D5865–01a or ASTM D5865–10, Standard Test Method for Gross Calorific Value of Coal and Coke, ASTM D240–00, Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by

Bomb Calorimeter, or ASTM D4809–00, Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter (Precision Method) for oil; and ASTM D3588–98, Standard Practice for Calculating Heat Value, compressibility Factor, and Relative Density of Gaseous Fuels, ASTM D4891–89 (Reapproved 2006), Standard Test Method for Heating Value of Gases in Natural Gas Range by Stoichiometric Combustion, GPA Standard 2172–96 Calculation of Gross Heating Value, Relative Density and Compressibility Factor for Natural Gas Mixtures from Compositional Analysis, GPA Standard 2261–00 Analysis for Natural Gas and Similar Gaseous Mixtures by Gas Chromatography, or ASTM D1826–94 (Reapproved 1998), Standard Test Method for Calorific (Heating) Value of Gases in Natural Gas Range by Continuous Recording Calorimeter, for gaseous fuels, as applicable. (All of these methods are incorporated by reference under § 75.6.)

* * * * *

5.5.1 (a) * * *

GCV_O= Gross calorific value of oil, as measured by ASTM D240–00, ASTM D5865–01a, ASTM D5865–10, or ASTM D4809–00 for each oil sample under section 2.2 of appendix D to this part, Btu/unit mass (all incorporated by reference under § 75.6).

* * * * *

5.5.3.2 All ASTM methods are incorporated by reference under § 75.6. Use ASTM D2013–01, Standard Practice for Preparing Coal Samples for Analysis, for preparation of a daily coal sample and analyze each daily coal sample for gross calorific value using ASTM D5865–01a or ASTM D5865–10, Standard Test Method for Gross Calorific Value of Coal and Coke. On-line coal analysis may also be used if the on-line analytical instrument has been demonstrated to be equivalent to the applicable ASTM methods under §§ 75.23 and 75.66.

5.5.3.3 * * *

GCV_C= Gross calorific value of coal sample, as measured by ASTM D3176–89 (Reapproved 2002), ASTM D5865–01a, or ASTM D5865–10, Btu/lb (incorporated by reference under § 75.6).

* * * * *

PART 86—[AMENDED]

14. The authority citation for part 86 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

15. Section 86.113–07 is amended as follows:

a. Revise entries (vii) and (viii) in the table in paragraph (b)(2).

b. Revise entries (vi) and (vii) in the table in paragraph (b)(3) to read as follows:

§ 86.113–07 Fuel specifications.

* * * * *

(b) * * *

(2) * * *

Item		ASTM Test Method No.	Type 2–D
* * * * * * *			
(vii) Flashpoint, min	°F	D93–09	130
	(°C)		(54.4)
(viii) Viscosity	centistokes	D445–09	2.0–3.2

(3) * * *

Item		ASTM Test Method No.	Type 2–D
* * * * * * *			
(vi) Flashpoint, min	°F	D93–09	130
	(°C)		(54.4)
(vii) Viscosity	centistokes	D445–09	2.0–3.2

* * * * *

16. In § 86.113–94 revise the entries "Flashpoint, min." and "Viscosity" in the table in paragraph (b)(2) and in the table in paragraph (b)(3) to read as follows:

§ 86.113–94 Fuel specifications.

* * * * *

(b) * * *

(2) * * *

Item		ASTM Test Method No.	Type 2–D
* * * * * * *			
Flashpoint, min	°F	D93–09	130
	(°C)		(54.4)
Viscosity	centistokes	D445–09	2.0–3.2

* * * * *

(3) * * *

Item		ASTM Test Method No.	Type 2–D
* * * * * * *			
Flashpoint, min	°F	D93–09	130
	(°C)		(54.4)
Viscosity	centistokes	D445–09	1.5–4.5

* * * * *

17. The authority citation for part 86, subpart D, continues to read as follows:

Authority: Secs. 202, 206, 207, 208, 301(a), Clean Air Act, as amended (42 U.S.C. 1857f–1, 1857f–5, 1857f–5a, 1857f–6, 1857g(a)).

18. In § 86.307–82 revise the entries "Flashpoint, °F (minimum)" and "Viscosity, centistokes" in the table in

paragraph (b)(2) and in the table in paragraph (b)(3) to read as follows:

§ 86.307–82 Fuel specifications.

* * * * *

(b) * * *

(2) * * *

Item	ASTM Test Method No.	Type 1–D	Type 2–D
* * * * * * *			
Flashpoint, °F (minimum)	D93–09	120	130
Viscosity, centistokes	D445–09	1.6–2.0	2.0–3.2

* * * * * (3) * * *

Item	ASTM Test Method No.	Type 1–D	Type 2–D
* * * * * * *			
Flashpoint, °F (minimum)	D93–09	120	130
Viscosity, centistokes	D445–09	1.2–2.2	1.5–4.5

* * * * *

19. The authority citation for part 86, subpart N, continues to read as follows:

Authority: Secs. 202, 206, 207, 208, 301(a), Clean Air Act as amended 42 U.S.C. 7521, 7524, 7541, 7542, and 7601.

20. Section 86.1313–94 is amended as follows:

a. Revise entries "Flashpoint, °F, (°C), and (minimum)" and "Viscosity, Centistokes" in Table N94–2 in paragraph (b)(2).

b. Revise entries "Flashpoint, min. °F (°C)" and "Viscosity, centistokes" in Table N94–3 in paragraph (b)(3) to read as follows:

§ 86.1313–94 Fuel specifications.

* * * * *

(b) * * *

(2) * * *

TABLE N94–2

Item	ASTM	Type 1–D	Type 2–D
* * * * * * *			
Flashpoint, °F	D93–09	120	130
(°C)		(48.9)	(54.4)
(minimum)			
Viscosity, centistokes	D445–09	1.6–2.0	2.0–3.2

* * * * * (3) * * *

TABLE N94–3

Item	ASTM	Type 1–D	Type 2–D
* * * * * * *			
Flashpoint, min. °F (°C)	D93–09	120	130
		(48.9)	(54.4)
Viscosity, centistokes	D445–09	1.2–2.2	1.5–4.5

* * * * *

21. In § 86.1313–98 revise the entries "Flashpoint, min." and "Viscosity" in Table N98–2 in paragraph (b)(2) to read as follows:

§ 86.1313–98 Fuel specifications.

* * * * *

(b) * * *

(2) * * *

TABLE N98–2

Item		ASTM Test Method No.	Type 1–D	Type 2–D
* * * * * * *				
Flashpoint, min	°F	D93–09	120	130
	(°C)		(48.9)	(54.4)
Viscosity	centistokes	D445–09	1.6–2.0	2.0–3.2

* * * * *

22. Section 86.1313–2007 is amended as follows:

a. Revise entries (vii) and (viii) in Table N07–2 in paragraph (b)(2).

b. Revise entries (vi) and (vii) in Table N07–3 in paragraph (b)(3) to read as follows:

§ 86.1313–2007 Fuel specifications.

* * * * *

(b) * * *

(2) * * *

TABLE N07–2

Item		ASTM Test Method No.	Type 1–D	Type 2–D
* * * * * * *				
(vii) Flashpoint, min	°F	D93–09	120	130
	(°C)		(48.9)	(54.4)
(viii) Viscosity	centistokes	D445–09	1.6–2.0	2.0–3.2

(3) * * *

TABLE N07–3

Item		ASTM Test Method No.	Type 1–D	Type 2–D
* * * * * * *				
(vi) Flashpoint, min	°F	D93–09	130	130
	(°C)		(54.4)	(54.4)
(vii) Viscosity	centistokes	D445–09	1.2–2.2	1.5–4.5

* * * * *

PART 89—[AMENDED]

23. The authority citation for part 89 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

24. In § 89.6 remove entries "ASTM D93–97" and "ASTM D445–97" and add entries "ASTM D93–09" and "ASTM D445–09" in numerical order to the table in paragraph (b)(1) to read as follows:

§ 89.6 Reference materials.

* * * * *

(b) * * *

(1) * * *

Document No. and name	40 CFR part 89 reference
* * * * * * *	
ASTM D93–09:	
"Standard Test Methods for Flash Point by Pensky-Martens Closed Cup Tester"	Appendix A to Subpart D.
* * * * * * *	
ASTM D445–09:	
"Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (the Calculation of Dynamic Viscosity)".	Appendix A to Subpart D.
* * * * * *	

* * * * *

25. In appendix A to subpart D of part 89, Table 4 is amended by revising the entries "Flashpoint, °C (minimum)" and "Viscosity @ 38 °C, Centistokes" to read as follows:

Appendix A to Subpart D of Part 89—Tables

* * * * *

TABLE 4—FEDERAL TEST FUEL SPECIFICATIONS

Item	Procedure (ASTM) [1]	Value (type 2–D)
* * * * * * *		
Flashpoint, °C (minimum)	D93–09	54
Viscosity @ 38 °C, centistokes	D445–09	2.0–3.2

[1] All ASTM procedures in this table have been incorporated by reference. See § 89.6.

* * * * *

PART 92—[AMENDED]

26. The authority citation for part 92 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

27. In § 92.5, the table in paragraph (b)(1) is amended by removing the entries "ASTM D 93–94" and "ASTM D 445–94" and adding the entries "ASTM D 93–09" and "ASTM D 445–09" to read as follows:

§ 92.5 Reference materials.

* * * * *

(b) * * *

(1) * * *

Document No. and name	40 CFR part 92 reference
* * * * * * *	
ASTM D 93–09, Standard Test Methods for Flash-Point by Pensky-Martens Closed Cup Tester	§ 92.113
* * * * * * *	
ASTM D 445–09, Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (the Calculation of Dynamic Viscosity)	§ 92.113
* * * * * * *	

* * * * *

28. In § 92.113 revise the entries "Flashpoint, min., °F and °C" and "Viscosity, centistokes" in Table B113–1 in paragraph (a)(1) to read as follows:

§ 92.113 Fuel specifications.

(a) * * *

(1) * * *

TABLE B113–1

Item	ASTM	Type 2–D
* * * * * * *		
Flashpoint, min.		
°F	D93–09	130
°C		(54.4)
Viscosity, centistokes	D445–09	2.0–3.2

* * * * *

PART 94—[AMENDED]

29. The authority citation for part 94 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

30. In § 94.5, Table 1 in paragraph (a) is amended by removing the entries "ASTM D 93–02" and "ASTM D 445–01" and adding the entries "ASTM D 93–09" and "ASTM D 445–09" to read as follows:

§ 94.5 Reference materials.

* * * * *

(a) * * *

TABLE 1 OF § 94.5—ASTM MATERIALS

Document No. and name	Part 94 reference
* * * * * * *	
ASTM D 93–09, Standard Test Methods for Flash-Point by Pensky-Martens Closed Cup Tester	94.108
* * * * * * *	
ASTM D 445–09, Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (the Calculation of Dynamic Viscosity)	94.108
* * * * * * *	

* * * * *

31. In § 94.108 revise "Flashpoint, °C" and "Viscosity at 38 °C, centistokes" in Table B–5 in paragraph (a)(1) to read as follows:

§ 94.108 Test fuels.

(a) * * *

(1) * * *

TABLE B–5—FEDERAL TEST FUEL SPECIFICATIONS

Item	Procedure [1]	Value
* * * * * * *		
Flashpoint, °C	ASTM D 93–09	54 minimum.
* * * * * * *		
Viscosity at 38 °C, centistokes	ASTM D445–09	2.0–3.2.

[1] All ASTM standards are incorporated by reference in § 94.5.

* * * * *

PART 761—[AMENDED]

32. The authority citation for part 761 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2611, 2614, and 2616.

33. In § 761.19, the table in paragraph (b) is amended by removing the entry "ASTM D 93–90" and adding the entry "ASTM D 93–09" to read as follows:

§ 761.19 References.

* * * * *

(b) * * *

References	CFR citation
ASTM D 93–09 Standard Test Methods for Flash Point by Pensky-Martens Closed Tester	§ 761.71(b)(2)(vi); § 761.75(b)(8)(iii).
* * * * * * *	

34. In § 761.71 revise paragraph (b)(2)(vi) to read as follows:

§ 761.71 High efficiency boilers.

* * * * *

(b) * * *

(2) * * *

(vi) The concentration of PCBs and of any other chlorinated hydrocarbon in the waste and the results of analyses using the American Society of Testing and Materials (ASTM) methods as follows: Carbon and hydrogen content using ASTM D–3178–84, nitrogen content using ASTM E–258–67 (Reapproved 1987), sulfur content using ASTM D–2784–89, ASTM D–1266–87, or ASTM D–129–64, chlorine content using ASTM D–808–87, water and sediment content using either ASTM D–2709–88 or ASTM D–1796–83 (Reapproved 1990), ash content using ASTM D–482–87, calorific value using ASTM D–240–87, carbon residue using either ASTM D–2158–89 or ASTM D–524–88, and flash point using ASTM D–93–09.

* * * * *

35. In § 761.75 revise paragraph (b)(8)(iii) to read as follows:

§ 761.75 Chemical waste landfills.

* * * * *

(b) * * *

(8) * * *

(iii) Ignitable wastes shall not be disposed of in chemical waste landfills. Liquid ignitable wastes are wastes that have a flash point less than 60 °C (140 °F) as determined by the following method or an equivalent method: Flash point of liquids shall be determined by a Pensky-Martens Closed Cup Tester, using the protocol specified in ASTM D–93–09, or the Setaflash Closed Tester using the protocol specified in ASTM D–3278–89.

* * * * *

PART 1065—[AMENDED]

36. The authority citation for part 1065 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

37. In § 1065.703 revise the entries "Flashpoint, min." and "Kinematic Viscosity" in Table 1 of § 1065.703 to read as follows:

§ 1065.703 Distillate diesel fuel.

* * * * *

TABLE 1 OF § 1065.703—TEST FUEL SPECIFICATIONS FOR DISTILLATE DIESEL FUEL

Item	Units	Ultra low sulfur	Low sulfur	High sulfur	Reference procedure [1]
* * * * * * *					
Flashpoint, min	°C	54	54	54	ASTM D93–09.
Kinematic Viscosity	cSt	2.0–3.2	2.0–3.2	2.0–3.2	ASTM D445–09.

[1] ASTM procedures are incorporated by reference in § 1065.1010. See § 1065.701(d) for other allowed procedures.

38. In § 1065.1010, Table 1 in paragraph (a) is amended by removing the entries "ASTM D93–07" and "ASTM D445–06" and adding the entries "ASTM D93–09" and "ASTM D 445–09" to read as follows:

§ 1065.1010 Reference materials.

* * * * *

(a) * * *

TABLE 1 OF § 1065.1010—ASTM MATERIALS

Document No. and name	Part 1065 reference
* * * * * * *	
ASTM D93–09, Standard Test Methods for Flash Point by Pensky-Martens Closed Cup Tester	1065.703
ASTM D 445–09, Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (the Calculation of Dynamic Viscosity)	1065.703
* * * * * * *	

* * * * *

[FR Doc. 2011–246 Filed 1–11–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2009–0729; FRL–9250–7]

Approval and Promulgation of Implementation Plans; Indiana; Removal of Vehicle Inspection and Maintenance Programs for Clark and Floyd Counties

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation plan (SIP) revision submitted by the State of Indiana to allow the State to discontinue the vehicle inspection and maintenance (I/M) program in Clark and Floyd Counties, IN, the Indiana portion of the Louisville (IN-KY) 1997 8-hour ozone area. The revision specifically requests that I/M program regulations be removed from the active control measures portion of the SIP. The regulations will remain in the contingency measures portion of the Clark and Floyd Counties ozone maintenance plans. The Indiana Department of Environmental Management (IDEM) submitted this request on October 10, 2006, and supplemented it on November 15, 2006, November 29, 2007, November 25, 2008. April 23, 2010, and November 19, 2010. EPA is proposing to approve Indiana's request because the State has demonstrated that discontinuing the I/M program in Clark and Floyd Counties will not interfere with the attainment and maintenance of the 8-hour ozone National Ambient Air Quality Standard (NAAQS) or with the attainment and maintenance of other air quality standards and requirements of the Clean Air Act (CAA).

DATES: Comments must be received on or before February 11, 2011.

ADDRESSES: Submit comments, identified by Docket ID No. EPA–R05–OAR–2009–0729, by one of the following methods:

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

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2009–0729. 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. 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 *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 Francisco J. Acevedo at (312) 886–6061 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Francisco J. Acevedo, Environmental Protection Specialist, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6052.

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

I. What should I consider as I prepare my comments for EPA?

A. 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.

B. Tips for Preparing Your Comments

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date, and page number).

2. Follow directions—EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

4. Describe any assumptions and provide any technical information and/or data that you used.

5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

6. Provide specific examples to illustrate your concerns, and suggest alternatives.

7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

8. Make sure to submit your comments by the comment period deadline identified.

II. What are EPA's proposed actions?

EPA is proposing to approve a SIP revision submitted by the State of Indiana to modify the ozone SIP such that the I/M program in Clark and Floyd Counties (the Indiana portion of the Louisville (IN-KY) 1997 8-hour ozone area) is no longer an active program in this area and remains instead as a contingency measure in this area's maintenance plan for 1997 8-hour ozone.

III. What changes to the Indiana SIP have been submitted to support the removal of the I/M program in Clark and Floyd Counties?

Indiana House Enrolled Act No. 1798, effective on July 1, 2003, amended Indiana code 13–17–5 to eliminate the applicability of the vehicle emissions testing rule to Clark and Floyd Counties after December 31, 2006, at which time the program ceased operations. IDEM submitted a revision to the Indiana SIP for Clark and Floyd Counties (the Indiana portion of the Louisville (IN-KY) 1997 8-hour ozone nonattainment area) on October 10, 2006, requesting that the Indiana I/M program in Clark and Floyd Counties be moved from the active control measures portion of the SIP to the contingency measures portion of the Clark and Floyd Counties 1997 8-Hour Ozone Maintenance Plan.

Clark and Floyd Counties were originally required to implement "basic" I/M programs under section 182(b)(4) of the CAA because they had been designated as part of the Louisville moderate 1-hour ozone nonattainment area. In order to maximize the emissions reductions from the I/M program, IDEM chose to implement an "enhanced" program in those areas and incorporated an on-board diagnostic (OBD) component into the program. EPA fully approved Indiana's I/M program on March 19, 1996 (61 FR 11142). The enhanced I/M program component began operation in 1997, to help meet nonattainment area requirements for the ozone NAAQS effective at the time.[1] The Louisville 1-hour ozone nonattainment area was redesignated to attainment for that standard on October 23, 2001 (66 FR 53665).

Subsequently, Clark and Floyd Counties were designated as a portion of the IN-KY Louisville nonattainment for the 1997 8-hour ozone NAAQS. On November 15, 2006, IDEM submitted a request to redesignate the Indiana portion of the Louisville nonattainment area to attainment for the 8-hour NAAQS, and for EPA approval of a 14-year maintenance plan for Clark and Floyd Counties. At the same time, IDEM requested EPA approval to terminate the I/M program in these counties. EPA approved the redesignation and maintenance plan for Clark and Floyd Counties on July 19, 2007 (72 FR 39571). The approved maintenance plan demonstrated that the area could maintain the standard without the need for emission reductions from I/M. See 72 FR 26057, 26064–26065 (May 8, 2007).

The Louisville 1997 8-hour ozone nonattainment area also includes Jefferson County, Kentucky. EPA approved the discontinuation of the I/M program in Jefferson County on May 18, 2005, at 70 FR 28429.

IV. What criteria apply to Indiana's request?

Areas designated nonattainment for the ozone NAAQS and classified "moderate" are required by the CAA to implement vehicle I/M. See CAA section 182(b)(4).[2] The Louisville area was previously designated moderate nonattainment for the 1-hour ozone standard, prompting the requirement for I/M. However, as noted above, the Louisville area was redesignated to attainment for the 1-hour standard, and the 1-hour standard has been revoked. While Clark and Floyd Counties were designated nonattainment for the 0.08 ppm 8-hour ozone standard, they were not classified for that standard.[3] Thus, these areas are not currently required to have I/M programs under the CAA and the State may move them to the contingency measures portion of the SIP,[4] provided the State can satisfy the anti-backsliding requirements of the CAA (sections 110(l) and 193) and of EPA's ozone implementation rule, 40

[1] Although the enhanced I/M program component began in 1997, there was a vehicle I/M program operating in the Clark and Floyd Counties prior to that date, and prior to November 15, 1990.

[2] Certain areas classified "marginal" are also required to implement I/M. *See* CAA section 182(a)(2)(B).

[3] Clark and Floyd Counties were classified "basic" (*i.e.*, subject to subpart 1) for the 0.08 parts per million (ppm) 8-hour ozone standard but that classification was vacated by a decision of the United States Court of Appeals for the D.C. Circuit. *See South Coast Air Quality Management Dist.* v. *EPA*, 472 F.3d 882 (D.C. Cir. 2006). EPA is in the process of responding to that decision through rulemaking. EPA promulgated a 0.075 ppm 8-hour ozone standard but subsequently announced that it was reconsidering that standard and in January 2010 proposed to change it. EPA has not designated areas for the 0.075 ppm 8-hour ozone standard that is being reconsidered.

[4] As discussed below, the measures must be retained as contingency measures because CAA section 175A(d) requires that the contingency measures portion of the SIP include a requirement that the State will implement all measures that were contained in the SIP before the area was redesignated to attainment.

CFR 51.905. As previously noted, EPA in approving the area's maintenance plan for the 1997 8-hour ozone standard concluded that it demonstrated maintenance without reliance on any emissions reductions from the I/M program.

CAA section 110(l) provides:

> The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of this Act.

In addition, EPA adopted anti-backsliding requirements as part of the implementation rule for the 0.08 ppm 8-hour ozone standard. *See* 40 CFR 51.905. For areas such as these that were required under the CAA to implement basic I/M, EPA applies the provisions of the implementation rule in concert with the provisions of 40 CFR 51.372(c).

The provisions of 40 CFR 51.372(c) allow certain areas seeking redesignation to submit only the authority for an I/M program (together with certain commitments), rather than an implemented program, in satisfaction of the applicable I/M requirements. Under these I/M rule provisions, a basic I/M area (*i.e.*, an area that was required to adopt a basic I/M program) which has been redesignated to attainment for the 1-hour ozone NAAQS can convert the I/M program to a contingency measure as part of the area's 1-hour ozone maintenance plan, notwithstanding the anti-backsliding provisions in EPA's 8-hour ozone implementation rule published April 30, 2004 (69 FR 23858). A basic I/M area which is designated nonattainment for the 8-hour ozone NAAQS, yet is not required to have an I/M program based on its 8-hour ozone classification, continues to have the option to move its I/M program to a contingency measure pursuant to the provisions of 40 CFR 51.372(c), provided the 8-hour ozone nonattainment area can demonstrate that doing so will not interfere with its ability to comply with any NAAQS or any other applicable CAA requirement pursuant to section 110(l) of the Act. For further details on the application of 8-hour ozone anti-backsliding provisions to basic I/M programs in 1-hour ozone maintenance areas, please refer to the May 12, 2004, EPA Memorandum from Tom Helms, Group Leader, Ozone Policy and Strategies Group, Office of Air Quality Planning and Standards, and Leila H. Cook, Group Leader, State Measures and Conformity Group, Office of Transportation and Air Quality, to the Air Program Managers, the subject of which is "1 Hour Ozone Maintenance Plans Containing Basic I/M Programs." A copy of this memorandum may be obtained at *http://www.epa.gov/ttn/oarpg/t1pgm.html* under the file date "5–12–04."

V. Has Indiana met the criteria for converting the I/M program in Clark and Floyd Counties to contingency measures?

Clark and Floyd Counties were redesignated to attainment of the 1-hour ozone NAAQS on October 23, 2001 (66 FR 53665). On July 19, 2007 (72 FR 39571), EPA approved the redesignation of Clark and Floyd Counties to attainment with respect to the 8-hour ozone NAAQS. EPA approved maintenance plans with respect to each of these standards in connection with these redesignations. The approved maintenance plans show that control measures in place in these areas are sufficient for overall emissions to remain beneath the attainment level of emissions until the end of the maintenance period, even without operation of I/M. In both plans, the conformity budget in the maintenance plans reflects mobile source emissions without I/M in future years, and the maintenance plans demonstrate that the applicable standard will continue to be met without I/M. In accordance with the Act and EPA redesignation guidance, states are free to adjust control strategies in the maintenance plan as long as they can satisfy section 110(l). With such a demonstration of noninterference with attainment or other applicable requirements, control programs may be discontinued and removed from the SIP. However, section 175A(d) of the CAA requires that contingency measures in the maintenance plan include all measures in the SIP for the area before that area was redesignated to attainment. Since the I/M program was in the SIP prior to redesignation to attainment for ozone, the I/M program must be included in the contingency portion of the ozone maintenance plan as required by section 175A(d). As part of its submittal, IDEM provided a demonstration showing continued maintenance of the 8-hour ozone standard without taking credit for reductions from the Clark and Floyd Counties I/M program after December 2006.

As discussed above, EPA interprets its regulations as allowing basic I/M areas such as these to have the option to move an I/M program to a contingency measure pursuant to 40 CFR 51.372(c), provided that moving I/M to contingency measures will not interfere with the area's ability to comply with any NAAQS or any other applicable CAA requirement (including section 193). Under 40 CFR 51.372(c), an area is required to include in its submittal, with a request to place the I/M program into the contingency measures: (1) Legal authority to implement a basic I/M program; (2) a commitment by the Governor of the State, or the Governor's designee, to adopt or consider adopting regulations to implement an I/M program to correct a violation of the ozone or carbon monoxide standard, in accordance with the maintenance plan; and (3) a contingency commitment that includes an enforceable schedule, with appropriate milestones, for adoption and implementation of an I/M program.

In the State's supplemental submittal of November 25, 2008, IDEM reaffirms that Indiana has retained the necessary legal authority to implement I/M under Indiana Code 13–17–5. EPA examined the applicable Indiana statutory language and the State's subsequent legal review and concurs with Indiana's finding that it has the necessary legal authority to implement I/M if it becomes necessary under the CAA to implement contingency measures. In addition, the State's supplemental submittal includes a commitment by IDEM to consider the adoption of I/M as a corrective measure should an ambient 8-hour ozone design value trigger a contingency measure in Clark and Floyd Counties, and the required program is determined by the State to be an I/M program. The State's supplemental submittal of April 23, 2010, also contains an I/M implementation schedule in the event that I/M is selected by the State as a corrective measure, as required by 40 CFR 51372(c).

As mentioned above, on July 19, 2007 (72 FR 39571), EPA concluded that Clark and Floyd Counties met the 0.08 ppm ozone air quality standard and redesignated this area to attainment for that standard. The maintenance plan for this area shows that the area will continue to attain the standard even with the discontinuation of I/M.

As noted above, the 1997 8-hour maintenance plan estimated the levels of volatile organic compounds (VOC) and oxides of nitrogen (NO_X) emissions in the area associated with attainment of the respective ozone standards, and found that emissions would remain below those quantities even with the discontinuation of I/M. Furthermore, the maintenance plan demonstrates that current emissions of VOC and NO_X, without the I/M program, are lower than emissions were in 2005, representing emissions when I/M was still operating.

EPA has also compared the expected reductions of VOC and NO_X from the I/M program with the reduction of emissions that have resulted from the Federal Motor Vehicle Control Program and other emission control programs since the I/M program ceased operation. EPA concludes that the ongoing reductions from implementation of these programs, particularly the Tier II standards for motor vehicles,[5] are greater than the emissions reductions that would have been achieved from the I/M program.

On March 27, 2008 (73 FR 16436), EPA revised the ozone standard to 0.075 ppm as an 8-hour average.[6] EPA therefore examined whether discontinuation of the I/M program in Clark and Floyd Counties might interfere with attainment and maintenance of this standard. The most direct evidence regarding this issue is the most recent three years of air quality data. Since the I/M program in Clark and Floyd Counties was discontinued in 2006, the most recent three years have all reflected emissions without operation of an I/M program in Clark and Floyd Counties. All ozone monitoring sites in the Louisville area are meeting the 0.075 ppm air quality standard, with the highest design value at 0.075 ppm, observed at the Watson Elementary site in Jefferson County, Kentucky (site 21–111–0051). Ozone air quality in the 2007 to 2009 period, representing a period in which the I/M program was discontinued, attains the ozone NAAQS and is better than ozone air quality in the 2004 to 2006, representing the last three years in which the program operated. Furthermore, Indiana's ozone maintenance plan for this area shows a continuing decline in the emissions of ozone precursors.

On November 19, 2010, Indiana submitted modeling analyses that further support the conclusion that the discontinuation of the I/M program in Clark and Floyd Counties will not interfere with attainment and maintenance of the 0.075 ppm ozone standard. This submittal reviews analyses conducted by EPA and by the Lake Michigan Air Directors Consortium (LADCO), in both cases reflecting no operation of an I/M program in Clark and Floyd Counties. These analyses indicate that the Louisville area can be expected to continue to attain the 0.075 ppm ozone standard without I/M in Clark and Floyd Counties. Most notably, Indiana reviews the modeling conducted by EPA in support of its proposed transport rule, showing that the Louisville area can be expected to continue to attain the 0.075 ppm ozone standard in 2012 not only with the discontinuation of the I/M program in Clark and Floyd Counties but also with the discontinuation of power plant emission controls mandated by the Clean Air Interstate Rule. Thus, these modeling analyses provide further evidence that the discontinuation of the I/M program in Clark and Floyd Counties will not interfere with attainment and maintenance of the 0.075 ozone standard in the Louisville area.

EPA also examined whether discontinuation of the I/M program might interfere with attainment of the annual fine particulate matter ($PM_{2.5}$) standards. Since Indiana discontinued its I/M program at the end of 2006, the $PM_{2.5}$ air quality from 2007 to 2009 are indicative of whether the Louisville area can be expected to attain the annual $PM_{2.5}$ standard notwithstanding the discontinuation of Indiana's I/M program. In a separate rulemaking proceeding, published on September 14, 2010 (75 FR 55725), EPA has proposed to determine that the Louisville area is now attaining the annual $PM_{2.5}$ standards.[7] Furthermore, mobile source emissions affecting $PM_{2.5}$ concentrations are continuing to decline, as a result of the Federal Motor Vehicle Control Program.[8]

EPA also examined whether cessation of the I/M program has interfered with attainment of other air quality standards. The Louisville area is designated attainment for the coarse particulate matter (PM_{10}) standard, for the 24-hour $PM_{2.5}$ standards promulgated on July 18, 1997, and October 17, 2006, for carbon monoxide, for sulfur dioxide, and for nitrogen dioxide. EPA has no reason to believe that discontinuation of the I/M program in Clark and Floyd Counties has caused or will cause the Louisville area to become nonattainment for any of these pollutants. In addition, EPA believes that the discontinuation of the I/M program in Clark and Floyd Counties will not interfere with the area's ability to meet any other CAA requirement.

VI. What are our conclusions concerning the removal of the I/M program in Clark and Floyd Counties?

For the reasons discussed above, EPA believes that Indiana has satisfied currently applicable criteria for discontinuing I/M in Clark and Floyd Counties. We are proposing to find that the State of Indiana has demonstrated that eliminating the I/M program in Clark and Floyd Counties is consistent with the requirements of sections 110(l) and 193 of the Clean Air Act. Accordingly, we are proposing to approve Indiana's request to modify the SIP such that I/M is no longer an active program in these areas and is instead a contingency measure in this area's maintenance plan.

VII. 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

[5] See 65 FR 6698 (February 10, 2000).

[6] As noted in footnote 3 above, EPA is in the process of reconsidering this standard.

[7] EPA received no comments on that proposal and will take final action on that determination before taking final action on Indiana's I/M shutdown request for Clark and Floyd Counties.

[8] As noted above, the Tier II standards are further reducing emissions of new vehicles from the 2004 to the 2009 model years.

Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Ozone, Particulate matter, Volatile organic compounds.

Dated: December 22, 2010.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2011–343 Filed 1–11–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2010–1028; FRL–9251–6]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Prevention of Significant Deterioration; Greenhouse Gas Permitting Authority and Tailoring Rule Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Virginia Department of Environmental Quality (VADEQ). This revision pertains to EPA's greenhouse gas (GHG) permitting provisions as promulgated on June 3, 2010. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before February 11, 2011.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2010–1028 by one of the following methods:

A. *www.regulations.gov.* Follow the online instructions for submitting comments.

B. *E-mail: cox.kathleen@epa.gov.*

C. *Mail:* EPA–R03–OAR–2010–1028, Kathleen Cox, Associate Director, Office of Permits and Air Toxics, Mailcode 3AP10, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2010–1028. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *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.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: David Talley, (215) 814–2117, or by e-mail at *talley.david@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, whenever "we," "us," or "our" is used, we mean EPA. On October 27, 2010, the Virginia Department of Environmental Quality submitted a revision to its SIP for the addition of a new Chapter 85 of 9VAC5.

I. Background

On October 27, 2010, VADEQ submitted a draft revision to EPA for approval into the Virginia SIP to establish appropriate emission thresholds for determining which new or modified stationary sources become subject to Virginia's Prevention of Significant Deterioration (PSD) permitting requirements for GHG emissions. Final approval of Virginia's October 27, 2010, SIP revision will put in place the GHG emission thresholds for PSD applicability set forth in EPA's "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule," (the Tailoring Rule) Final Rule, 75 FR 31514 (June 3, 2010), ensuring that smaller GHG sources emitting less than these thresholds will not be subject to permitting requirements when these requirements begin applying to GHGs on January 2, 2011. Pursuant to section 110 of the CAA, EPA is proposing to approve this revision into the Virginia SIP.

Today's proposed action on the Virginia SIP generally relates to three federal rulemaking actions. The first rulemaking is EPA's Tailoring Rule. The second rulemaking is EPA's "Action to Ensure Authority to Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call," Proposed Rule (GHG SIP Call). 75 FR 53892 (September 2, 2010). The third rulemaking is EPA's "Action to Ensure Authority to Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan," Proposed Rule, 75 FR 53883 (September 2, 2010) (GHG FIP), which serves as a companion rulemaking to EPA's proposed GHG SIP Call. A summary of each of these rulemakings is described below.

In the first rulemaking, the Tailoring Rule, EPA established appropriate GHG

emission thresholds for determining the applicability of PSD requirements to GHG-emitting sources. In the second rulemaking, the GHG SIP Call (which is not yet final), EPA proposed to find that the EPA-approved PSD programs in 13 States (not including Virginia) are substantially inadequate to meet CAA requirements because they do not appear to apply PSD requirements to GHG-emitting sources. For each of these States, EPA proposed to require the State (through a "SIP Call") to revise its SIP as necessary to correct such inadequacies. EPA proposed an expedited schedule for these States to submit their SIP revision, in light of the fact that as of January 2, 2011, certain GHG-emitting sources will become subject to the PSD requirements and may not be able to obtain a PSD permit in order to construct or modify. In the third rulemaking, the GHG FIP (which is not yet final), EPA proposed a FIP to apply in any state that is unable to submit, by its deadline, a SIP revision to ensure that the state has authority to issue PSD permits for GHG-emitting sources. Because Virginia already has authority to regulate GHGs, Virginia is only seeking to revise its SIP to put in place the GHG emission thresholds for PSD applicability set forth in EPA's Tailoring Rule, thereby ensuring that smaller GHG sources emitting less than these thresholds will not be subject to permitting requirements when these requirements begin applying to GHGs on January 2, 2011.

Below is a brief overview of GHGs and GHG-emitting sources, the CAA PSD program, minimum SIP elements for a PSD program, and EPA's recent actions regarding GHG permitting. Following this section, EPA discusses, in sections III and IV, the relationship between the proposed Virginia SIP revision and EPA's other national rulemakings as well as EPA's analysis of Virginia's SIP revision.

A. What are GHGs and their sources?

A detailed explanation of GHGs, climate change and the impact on health, society, and the environment is included in EPA's technical support document for EPA's GHG endangerment finding final rule (Document ID No. EPA–HQ–OAR–2009–0472–11292 at *www.regulations.gov*).

The endangerment finding rulemaking is discussed later in this rulemaking. A summary of the nature and sources of GHGs is provided below.

GHGs trap the Earth's heat that would otherwise escape from the atmosphere into space and form the greenhouse effect that helps keep the Earth warm enough for life. GHGs are naturally present in the atmosphere and are also emitted by human activities. Human activities are intensifying the naturally occurring greenhouse effect by increasing the amount of GHGs in the atmosphere, which is changing the climate in a way that endangers human health, society, and the natural environment.

Some GHGs, such as carbon dioxide (CO_2), are emitted to the atmosphere through natural processes as well as human activities. Other gases, such as fluorinated gases, are created and emitted solely through human activities. The well-mixed GHGs of concern directly emitted by human activities include CO_2, methane (CH_4), nitrous oxide (N_2O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF_6), hereafter referred to collectively as "the six well-mixed GHG," or, simply, GHGs. Together these six well-mixed GHGs constitute the "air pollutant" upon which the GHG thresholds in EPA's Tailoring Rule are based. These six gases remain in the atmosphere for decades to centuries where they become well-mixed globally in the atmosphere. When they are emitted more quickly than natural processes can remove them from the atmosphere, their concentrations increase, thus increasing the greenhouse effect.

In the United States, the combustion of fossil fuels (e.g., coal, oil, gas) is the largest source of CO_2 emissions and accounts for 80 percent of the total GHG emissions by mass. Anthropogenic CO_2 emissions released from a variety of sources, including through the use of fossil fuel combustion and cement production from geologically stored carbon (e.g., coal, oil, and natural gas) that is hundreds of millions of years old, as well as anthropogenic CO_2 emissions from land-use changes such as deforestation, perturb the atmospheric concentration of CO_2, and the distribution of carbon within different reservoirs readjusts. More than half of the energy-related emissions come from large stationary sources such as power plants, while about a third come from transportation. Of the six well-mixed GHGs, four (CO_2, CH_4, N_2O, and HFCs) are emitted by motor vehicles. In the United States, industrial processes (such as the production of cement, steel, and aluminum), agriculture, forestry, other land use, and waste management are also important sources of GHGs.

Different GHGs have different heat-trapping capacities. The concept of Global Warming Potential (GWP) was developed to compare the heat-trapping capacity and atmospheric lifetime of one GHG to another. The definition of a GWP for a particular GHG is the ratio of heat trapped by one unit mass of the GHG to that of one unit mass of CO_2 over a specified time period. When quantities of the different GHGs are multiplied by their GWPs, the different GHGs can be summed and compared on a carbon dioxide equivalent (CO_2e) basis. For example, CH_4 has a GWP of 21, meaning each ton of CH_4 emissions would have 21 times as much impact on global warming over a 100-year time horizon as 1 ton of CO_2 emissions. Thus, on the basis of heat-trapping capability, 1 ton of CH_4 would equal 21 tons of CO_2e. The GWPs of the non-CO_2 GHG range from 21 (for CH_4) up to 23,900 (for SF_6). Aggregating all GHG on a CO_2e basis at the source level allows a facility to evaluate its total GHG emissions contribution based on a single metric.

B. What are the general requirements of the PSD program?

1. Overview of the PSD Program

The PSD program is a preconstruction review and permitting program applicable to new major stationary sources and major modifications at existing stationary sources. The PSD program applies in areas that are designated "attainment" or "unclassifiable" for a national ambient air quality standard (NAAQS). The PSD program is contained in part C of title I of the CAA. The "nonattainment new source review (NSR)" program applies in areas not in attainment of a NAAQS or in the Ozone Transport Region, and it is implemented under the requirements of part D of title I of the CAA. Collectively, EPA commonly refers to these two programs as the major NSR program. The governing EPA rules are contained in 40 CFR 51.165, 51.166, 52.21, 52.24, and part 51, Appendices S and W. There is no NAAQS for CO_2 or any of the other well-mixed GHGs, nor has EPA proposed any such NAAQS; therefore, unless and until EPA takes such further action, the nonattainment NSR program does not apply to GHGs.

The applicability of PSD to a particular source must be determined in advance of construction or modification and is pollutant-specific. The primary criterion in determining PSD applicability for a proposed new or modified source is whether the source is a "major emitting facility," based on its predicted potential emissions of regulated pollutants, within the meaning of CAA section 169(1) that either constructs or undertakes a modification. EPA has implemented these requirements in its regulations, which use somewhat different

terminology than the CAA does, for determining PSD applicability.

a. Major Stationary Source

Under PSD, a "major stationary source" is any source belonging to a specified list of 28 source categories that emits or has the potential to emit (PTE) 100 tons per year (tpy) or more of any air pollutant subject to regulation under the CAA, or any other source type that emits or has the potential to emit such pollutants in amounts equal to or greater than 250 tpy. We refer to these levels as the 100/250-tpy thresholds. A new source with a potential to emit (PTE) at or above the applicable "major stationary source threshold" is subject to major NSR. These limits originate from section 169 of the CAA, which applies PSD to any "major emitting facility" and defines the term to include any source that emits or has a PTE of 100 or 250 tpy, depending on the source category. Note that the major source definition incorporates the phrase "subject to regulation," which, as described later, will begin to include GHGs on January 2, 2011, under our interpretation of that phrase as discussed in the recent memorandum entitled, "EPA's Interpretation of Regulations that Determine Pollutants Covered by Federal Prevention of Significant Deterioration (PSD) Permit Program." 75 FR 17004 (April 2, 2010).

b. Major Modifications

PSD also applies to existing sources that undertake a "major modification," which occurs when: (1) There is a physical change in, or change in the method of operation of, a "major stationary source;" (2) the change results in a "significant" emissions increase of a pollutant subject to regulation (equal to or above the significance level that EPA has set for the pollutant in 40 CFR 52.21(b)(23)); and (3) there is a "significant net emissions increase" of a pollutant subject to regulation that is equal to or above the significance level (defined in 40 CFR 52.21(b)(23)). Significance levels, which EPA has promulgated for criteria pollutants and certain other pollutants, represent a de minimis contribution to air quality problems. When EPA has not set a significance level for a regulated NSR pollutant, PSD applies to an increase of the pollutant in any amount (that is, in effect, the significance level is treated as zero).

2. General Requirements for PSD

This section provides a very brief summary of the main requirements of the PSD program. One principal requirement is that a new major source or major modification must apply best available control technology (BACT), which is determined on a case-by-case basis taking into account, among other factors, the cost effectiveness of the control and energy and environmental impacts. EPA has developed a "top-down" approach for BACT review, which involves a decision process that includes identification of all available control technologies, elimination of technically infeasible options, ranking of remaining options by control and cost effectiveness, and then selection of BACT. Under PSD, once a source is determined to be major for any regulated NSR pollutant, a BACT review is performed for each attainment pollutant that exceeds its PSD significance level as part of new construction or for modification projects at the source, where there is a significant increase and a significant net emissions increase of such pollutant.[1]

In addition to performing BACT, the source must analyze impacts on ambient air quality to assure that sources do not cause or contribute to violation of any NAAQS or PSD increments and must analyze impacts on soil, vegetation, and visibility. In addition, sources or modifications that would impact Class I areas (e.g., national parks) may be subject to additional requirements to protect air quality related values (AQRVs) that have been identified for such areas. Under PSD, if a source's proposed project may impact a Class I area, the Federal Land Manager is notified and is responsible for evaluating a source's projected impact on the AQRVs and recommending either approval or disapproval of the source's permit application based on anticipated impacts. There are currently no NAAQS or PSD increments established for GHGs, and therefore these PSD requirements would not apply for GHGs, even when PSD is triggered for GHGs. However, if PSD is triggered for a GHG-emitting source, all regulated NSR pollutants that the new source emits in significant amounts would be subject to PSD requirements. Therefore, if a facility triggers NSR for non-GHG pollutants for which there are established NAAQS or increments, the air quality, additional impacts, and Class I requirements would apply to those pollutants.

[1] EPA notes that the PSD program has historically operated in this fashion for all pollutants—when new sources or modifications are "major," PSD applies to all pollutants that are emitted in significant quantities from the source or project. This rule does not alter that for sources or modifications that are major due to their GHG emissions.

Pursuant to existing PSD requirements, the permitting authority must provide notice of its preliminary decision on a source's application for a PSD permit and must provide an opportunity for comment by the public, industry, and other interested persons. After considering and responding to comments, the permitting authority must issue a final determination on the construction permit. Usually NSR permits are issued by a state or local air pollution control agency that has its own authority to issue PSD permits under a permit program that has been approved by EPA for inclusion in its SIP. In some areas, EPA has delegated its authority to issue PSD permits under federal regulations to the state or local agency. In other areas, EPA issues the permits under its own authority.

C. What are the CAA requirements to include the PSD program in the SIP?

The CAA contemplates that the PSD program be implemented in the first instance by the states and requires that states include PSD requirements in their SIPs. CAA section 110(a)(2)(C) requires that—

> Each implementation plan * * * shall * * * include a program to provide for * * * regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in part[] C * * * of this subchapter.

CAA section 110(a)(2)(J) requires that—

> Each implementation plan * * * shall * * * meet the applicable requirements of * * * part C of this subchapter (relating to significant deterioration of air quality and visibility protection).

CAA section 161 provides that—

> Each applicable implementation plan shall contain emission limitations and such other measures as may be necessary, as determined under regulations promulgated under this part [C], to prevent significant deterioration of air quality for such region * * * designated * * * as attainment or unclassifiable.

These provisions, read in conjunction with the PSD applicability provisions as well as other provisions such as the BACT provision the under CAA Section 165(a)(4), mandate that SIPs include PSD programs that are applicable to, among other things, any air pollutant that is subject to regulation. As discussed below, this includes GHGs on and after January 2, 2011.[2] A number of

[2] In the Tailoring Rule, EPA noted that commenters argued, with some variations, that the PSD provisions applied only to NAAQS pollutants,

states do not have PSD programs approved into their SIPs. In those states, EPA's regulations at 40 CFR 52.21 govern, and either EPA or the state as EPA's delegatee acts as the permitting authority. However, most states have PSD programs that have been approved into their SIPs, and these states implement their PSD programs and act as the permitting authority. Virginia's PSD program has been granted a "limited" approval. The approval was limited because the definition of "baseline actual emissions" at 9 VAC5 Chapter 80 differs from the federal definition at 40 CFR 51.166 (b)(47). This issue will not prevent today's proposed action from being fully approved.

D. What actions has EPA taken concerning PSD requirements for GHG-emitting sources?

1. What are the Endangerment Finding, the Light Duty Vehicle Rule, and the Johnson Memo Reconsideration?

By notice dated December 15, 2009, and pursuant to CAA section 202(a), EPA issued two findings regarding GHGs that are commonly referred to as the "Endangerment Finding" and the "Cause or Contribute Finding." "Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act," 74 FR 66496. In the Endangerment Finding, the Administrator found that six long-lived and directly emitted GHGs—CO_2, CH_4, N_2O, HFCs, PFCs, and SF_6—may reasonably be anticipated to endanger public health and welfare. In the Cause or Contribute Finding, the Administrator "define[d] the air pollutant as the aggregate group of the same six * * * greenhouse gases," 74 FR 66536, and found that the combined emissions of this air pollutant from new motor vehicles and new motor vehicle engines contribute to the GHG air pollution that endangers public health and welfare.

By notice dated May 7, 2010, EPA published what is commonly referred to as the "Light-Duty Vehicle Rule" (LDVR), which for the first time established federal controls on GHGs emitted from light-duty vehicles. "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule." 75 FR 25324. In its applicability provisions, the LDVR specifies that it "contains standards and other regulations applicable to the emissions of six greenhouse gases," including CO_2, CH_4, N_2O, HFCs, PFCs, and SF_6. 75 FR 25686 (40 CFR 86.1818–12(a)). Shortly before finalizing the LDVR, by notice dated April 2, 2010, EPA published a notice commonly referred to as the Johnson Memo Reconsideration. On December 18, 2008, EPA issued a memorandum, "EPA's Interpretation of Regulations that Determine Pollutants Covered by Federal Prevention of Significant Deterioration (PSD) Permit Program" (known as the "Johnson Memo" or the "PSD Interpretive Memo," and referred to in this preamble as the "Interpretive Memo"), that set forth EPA's interpretation regarding which EPA and state actions, with respect to a previously unregulated pollutant, cause that pollutant to become "subject to regulation" under the CAA. Whether a pollutant is "subject to regulation" is important for the purposes of determining whether it is covered under the federal PSD permitting program. The Interpretive Memo established that a pollutant is "subject to regulation" only if it is subject to either a provision in the CAA or regulation adopted by EPA under the CAA that requires actual control of emissions of that pollutant (referred to as the "actual control interpretation"). On February 17, 2009, EPA granted a petition for reconsideration on the Interpretive Memo and announced its intent to conduct a rulemaking to allow for public comment on the issues raised in the memorandum and on related issues. EPA also clarified that the Interpretive Memo would remain in effect pending reconsideration.

On March 29, 2010, EPA signed a notice conveying its decision to continue applying (with one limited refinement) the Interpretive Memo's interpretation of "subject to regulation" ("Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs," 75 FR 17004). EPA concluded that the "actual control interpretation" is the most appropriate interpretation to apply given the policy implications. However, EPA refined the Agency's interpretation in one respect: EPA established that PSD permitting requirements apply to a newly regulated pollutant at the time a regulatory requirement to control emissions of that pollutant "takes effect" (rather than upon promulgation or the legal effective date of the regulation containing such a requirement). In addition, based on the anticipated promulgation of the LDVR, EPA stated that the GHG requirements of the vehicle rule would take effect on January 2, 2011, because that is the earliest date that a 2012 model year vehicle may be introduced into commerce. In other words, the compliance obligation under the LDVR does not occur until a manufacturer may introduce into commerce vehicles that are required to comply with GHG standards, which will begin with model year 2012 and will not occur before January 2, 2011.

2. What is EPA's Tailoring Rule?

On June 3, 2010 (effective August 2, 2010), EPA promulgated a final rulemaking, the Tailoring Rule, for the purpose of relieving overwhelming permitting burdens that would, in the absence of the rule, fall on permitting authorities and sources. 75 FR 31514. EPA accomplished this by tailoring the applicability criteria that determine which GHG emission sources become subject to the PSD program[3] of the CAA. In particular, EPA established in the Tailoring Rule a phase-in approach for PSD applicability and established the first two steps of the phase-in for the largest GHG-emitters. Additionally, EPA committed to certain follow-up actions regarding future steps beyond the first two, discussed in more detail later in this notice.

For the first step of the Tailoring Rule, which will begin on January 2, 2011, PSD requirements will apply to major stationary source GHG emissions only if the sources are subject to PSD anyway due to their emissions of non-GHG pollutants. Therefore, in the first step, EPA will not require sources or modifications to evaluate whether they are subject to PSD requirements solely on account of their GHG emissions. Specifically, for PSD, Step 1 requires that as of January 2, 2011, the applicable requirements of PSD, most notably, the BACT requirement, will apply to projects that increase net GHG emissions by at least 75,000 tpy CO_2e, but only if the project also significantly increases emissions of at least one non-GHG pollutant.

The second step of the Tailoring Rule, beginning on July 1, 2011, will phase in additional large sources of GHG emissions. New sources that emit, or have the PTE, at least 100,000 tpy CO_2e will become subject to the PSD requirements. In addition, sources that emit or have the PTE at least 100,000 tpy CO_2e and that undertake a modification that increases net GHG

and not GHG, and EPA responded that the PSD provisions apply to all pollutants subject to regulation, including GHG. See 75 FR 31560–62 (June 3, 2010). EPA maintains its position that the PSD provisions apply to all pollutants subject to regulation, and the Agency incorporates by reference the discussion of this issue in the Tailoring Rule.

[3] The Tailoring Rule also applies to the title V program, which requires operating permits for existing sources. However, today's action does not affect Virginia's title V program.

emissions by at least 75,000 tpy CO_2e will also be subject to PSD requirements. For both steps, EPA notes that if sources or modifications exceed these CO_2e-adjusted GHG triggers, they are not covered by permitting requirements unless their GHG emissions also exceed the corresponding mass-based triggers in tpy.

EPA believes that the costs to the sources and the administrative burdens to the permitting authorities of PSD permitting will be manageable at the levels in these initial two steps and that it would be administratively infeasible to subject additional sources to PSD requirements at those times. However, EPA also intends to issue a supplemental notice of proposed rulemaking in 2011, in which the Agency will propose or solicit comment on a third step of the phase-in that would include more sources, beginning on July 1, 2013. In the Tailoring Rule, EPA established an enforceable commitment that the Agency will complete this rulemaking by July 1, 2012, which will allow 1 year's notice before Step 3 would take effect. In addition, EPA committed to explore streamlining techniques that may well make the permitting programs much more efficient to administer for GHG, and that therefore may allow their expansion to smaller sources. EPA expects that the initial streamlining techniques will take several years to develop and implement.

In the Tailoring Rule, EPA also included a provision, that no source with emissions below 50,000 tpy CO_2e, and no modification resulting in net GHG increases of less than 50,000 tpy CO_2e, will be subject to PSD permitting before at least 6 years (i.e., April 30, 2016). This is because EPA has concluded that at the present time, the administrative burdens that would accompany permitting sources below this level would be so great that even with the streamlining actions that EPA may be able to develop and implement in the next several years, and even with the increases in permitting resources that EPA can reasonably expect the permitting authorities to acquire, it would be impossible to administer the permit programs for these sources until at least 2016.

As EPA explained in the Tailoring Rule, the threshold limitations are necessary because without it, PSD would apply to all stationary sources that emit or have the PTE more than 100 or 250 tons of GHG per year beginning on January 2, 2011. This is the date when EPA's recently promulgated LDVR takes effect, imposing control requirements for the first time on CO_2 and other GHGs. If this January 2, 2011, date were to pass without the Tailoring Rule being in effect, PSD requirements would apply to GHG emissions at the 100/250 tpy applicability levels provided under a literal reading of the CAA as of that date. From that point forward, a source owner proposing to construct any new major source that emits at or higher than the applicability levels (and which therefore may be referred to as a "major" source) or modify any existing major source in a way that would increase GHG emissions would need to obtain a permit under the PSD program that addresses these emissions before construction or modification could begin.

Under these circumstances, many small sources would be burdened by the costs of the individualized PSD control technology requirements and permit applications that the PSD provisions, absent streamlining, require. Additionally, state and local permitting authorities would be burdened by the extraordinary number of these permit applications, which are orders of magnitude greater than the current inventory of permits and would vastly exceed the current administrative resources of the permitting authorities. Permit gridlock would result since the permitting authorities would likely be able to issue only a tiny fraction of the permits requested.

In the Tailoring Rule, EPA adopted regulatory language codifying the phase-in approach. As explained in that rulemaking, many state, local and tribal area programs will likely be able to immediately implement the approach without rule or statutory changes by, for example, interpreting the term "subject to regulation" that is part of the applicability provisions for PSD permitting. EPA has requested permitting authorities to confirm that they will follow this implementation approach for their programs, and if they cannot, then EPA has requested that they notify the Agency so that we can take appropriate follow-up action to narrow federal approval of their programs before GHGs become subject to PSD permitting on January 2, 2011.[4] On July 28, 2010, Virginia provided a letter to EPA with confirmation that the Commonwealth has the authority to regulate GHG in its PSD and title V programs. See the docket for this proposed rulemaking for a copy of Virginia's letter.

The thresholds that EPA established in the Tailoring Rule are based on CO_2e for the aggregate sum of six GHGs that constitute the pollutant that will be subject to regulation, which we refer to as GHG.[5] These gases are: CO_2, CH_4, N_2O, HFCs, PFCs, and SF_6. Thus, in EPA's Tailoring Rule, EPA provided that PSD applicability is based on the quantity that results when the mass emissions of each of these gases is multiplied by the GWP of that gas, and then summed for all six gases. However, EPA further provided that in order for a source's GHG emissions to trigger PSD requirements, the quantity of the GHG emissions must equal or exceed both the applicability thresholds established in the Tailoring Rule on a CO_2e basis and the statutory thresholds of 100 or 250 tpy on a mass basis.[6] Similarly, in order for a source to be subject to the PSD modification requirements, the source's net GHG emissions increase must exceed the applicable significance level on a CO_2e basis and must also result in a net mass increase of the constituent gases combined.

3. What is the GHG SIP Call?

By **Federal Register** notice dated September 2, 2010, EPA proposed the GHG SIP Call. In that action, along with the companion GHG FIP rulemaking published at the same time, EPA took steps to ensure that in the 13 States that do not appear to have authority to issue PSD permits to GHG-emitting sources at present, either the State or EPA will have the authority to issue such permits by January 2, 2011. EPA explained that although for most states, either the state or EPA is already authorized to issue PSD permits for GHG-emitting sources as of that date, our preliminary information shows that these 13 States have EPA-approved PSD programs that do not appear to include GHG-emitting sources and therefore do not appear to authorize these States to issue PSD permits to such sources. Therefore, EPA

[4] Narrowing EPA's approval will ensure that for federal purposes, sources with GHG emissions that are less than the Tailoring Rule's emission thresholds will not be obligated under federal law to obtain PSD permits during the gap between when GHG PSD requirements go into effect on January 2, 2011 and when either (1) EPA approves a SIP revision adopting EPA's tailoring approach, or (2) if a state opts to regulate smaller GHG-emitting sources, the state demonstrates to EPA that it has adequate resources to handle permitting for such sources. EPA expects to finalize the narrowing action prior to the January 2, 2011 deadline with respect to those States for which EPA will not have approved the Tailoring Rule thresholds in their SIPs by that time.

[5] The term "greenhouse gases" is commonly used to refer generally to gases that have heat-trapping properties. However, in this notice, unless noted otherwise, we use it to refer specifically to the pollutant regulated in the LDVR.

[6] The relevant thresholds are 100 tpy for title V, and 250 tpy for PSD, except for 28 categories listed in EPA regulations for which the PSD threshold is 100 tpy.

proposed to find that these 13 States' SIPs are substantially inadequate to comply with CAA requirements and, accordingly, proposed to issue a SIP Call to require a SIP revision that applies their SIP PSD programs to GHG-emitting sources. In the companion GHG FIP rulemaking, EPA proposed a FIP that would give EPA authority to apply EPA's PSD program to GHG-emitting sources in any State that is unable to submit a corrective SIP revision by its deadline. Virginia was not one of the States for which EPA proposed a SIP Call.

II. What is the relationship between today's proposed action and EPA's proposed GHG SIP Call and GHG FIP?

As noted above, by notice dated September 2, 2010, EPA proposed the GHG SIP Call. At the same time, EPA proposed a FIP to apply in any state that is unable to submit, by its deadline, a SIP revision to ensure that the state has authority to issue PSD permits to GHG-emitting sources.[7] As discussed in Section IV of this rulemaking, Virginia interprets its current PSD regulations as providing them with the authority to regulate GHG, and as such, Virginia is not included on the list of areas for the proposed SIP call. Additionally, Virginia would not be subject to the FIP to implement GHG for PSD applicability. Virginia's October 27, 2010, proposed SIP revision (the subject of this rulemaking) merely modifies Virginia's SIP to establish appropriate thresholds for determining which stationary sources and modification projects become subject to permitting requirements for GHG emissions under the PSD program of the CAA.

III. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information "required by law," including documents and information "required by Federal law to maintain program delegation, authorization or approval," since Virginia must "enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. * * *" The opinion concludes that "[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval." Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that "[t]o the extent consistent with requirements imposed by Federal law," any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since "no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity."

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its PSD program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

IV. What is EPA's analysis of Virginia's SIP revision?

On October 27, 2010, VADEQ provided a revision to Virginia's SIP to EPA for approval. This revision to Virginia's SIP is necessary because without it, PSD requirements would apply, as of January 2, 2011, at the 100- or 250-tpy levels provided under the CAA. This would greatly increase the number of required permits, imposing undue costs on small sources; which would overwhelm Virginia's permitting resources and severely impair the function of the program.

Virginia's October 27, 2010, proposed SIP revision establishes thresholds for determining which stationary sources and modification projects become subject to permitting requirements for GHG emissions under Virginia's PSD program. Specifically, Virginia's October 27, 2010, proposed SIP revision includes changes to VADEQ's Rule 9VAC5, specifically the creation of Chapter 85: *Permits for Stationary Sources Subject to Regulation*, and addresses the thresholds for GHG permitting applicability.

The current SIP-approved program (adopted prior to the promulgation of EPA's Tailoring Rule) applies to major stationary sources (having the potential to emit at least 100 tpy or 250 tpy or more of a regulated NSR pollutant, depending on the type of source) or modifications constructing in areas designated attainment or unclassifiable with respect to the NAAQS.

The changes to Virginia's PSD program regulations at 9VAC5 Chapter 85: *Permits for Stationary Sources Subject to Regulation* are substantively the same as the federal provisions amended in EPA's Tailoring Rule. As

[7] As explained in the proposed GHG SIP Call (75 FR 53892, 53896), EPA intends to finalize its finding of substantial inadequacy and the SIP call for the 13 listed states by December 1, 2010. EPA requested that the states for which EPA is proposing a SIP call identify the deadline—between 3 weeks and 12 months from the date of signature of the final SIP Call—that they would accept for submitting their corrective SIP revision.

part of its review of the Virginia submittal, EPA performed a line-by-line review of Virginia's proposed revision and has preliminarily determined that they are consistent with the Tailoring Rule. These changes to Virginia's regulations are also consistent with section 110 of the CAA because they are incorporating GHGs for regulation in the Virginia SIP.

V. Proposed Action

Pursuant to section 110 of the CAA, EPA is proposing to approve Virginia's October 27, 2010, SIP revision, relating to PSD requirements for GHG-emitting sources. Specifically, Virginia's October 27, 2010, proposed SIP revision establishes appropriate emissions thresholds for determining PSD applicability to new and modified GHG-emitting sources in accordance with EPA's Tailoring Rule. EPA has made the preliminary determination that this SIP revision is approvable because it is in accordance with the CAA and EPA regulations regarding PSD permitting for GHGs. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

VI. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, and Reporting and recordkeeping requirements.

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

Dated: January 3, 2011.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2011–495 Filed 1–11–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R3–ES–2010–0042; MO 92210–0–0009–B4]

RIN 1018–AW90

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Tumbling Creek Cavesnail

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the comment period on June 23, 2010, proposed designation of critical habitat for the Tumbling Creek cavesnail (*Antrobia culveri*) under the Endangered Species Act of 1973, as amended (Act). We also announce the availability of a draft economic analysis (DEA) of the proposed designation of critical habitat for the Tumbling Creek cavesnail and an amended required determinations section of the proposal. We are reopening the comment period for an additional 30 days to allow all interested parties an opportunity to comment on the items listed above. Comments previously submitted need not be resubmitted and will be fully considered in preparation of the final rule.

DATES: We will consider public comments we receive on or before February 11, 2011. Comments must be received by 11:59 p.m. Eastern Time on the closing date. Any comments that we receive after the closing date may not be considered in the final decision on this action.

ADDRESSES: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R3–ES–2010–0042.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–R3–ES–2010–0042; Division of Policy and Directives Management; U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Suite 222, Arlington, VA 22203.

We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (*see* the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Paul McKenzie, Endangered Species Coordinator, Columbia Missouri Ecological Services Field Office, 101 Park DeVille Dr.; Suite A, Columbia, MO 65203; telephone (573) 234–2132; facsimile (573) 234–2181. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We intend that any final action resulting from the proposed rule will be based on the best scientific data available and will be as accurate and effective as possible. Therefore, we request comments or information from other concerned government agencies, the scientific community, industry, or any other interested party during this

reopened comment period on the proposed designation of critical habitat for the Tumbling Creek cavesnail published in the **Federal Register** on June 23, 2010 (75 FR 35751), including the draft economic analysis of the proposed designation of critical habitat for the Tumbling Creek cavesnail and the amended required determinations provided in this document. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why we should or should not designate habitat as "critical habitat" under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat is not prudent.

(2) Specific information on:

- The amount and distribution of Tumbling Creek cavesnail habitat,
- What areas within the geographical area occupied by the species at the time of listing that contain features essential to the conservation of the species we should include in the designation and why, and
- What areas outside the geographical area occupied at the time of listing are essential to the conservation of the species and why.

(3) Land-use designations and current or planned activities in the subject areas and their possible effects on the proposed critical habitat for the Tumbling Creek cavesnail.

(4) Any foreseeable economic, national security, or other relevant impacts of designating any area that may be included in the final designation. We are particularly interested in any impacts on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions), and the benefits of including or excluding areas from the proposed designation that exhibit these impacts.

(5) The likelihood of adverse social reactions to the designation of critical habitat, as discussed in the DEA, and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designation.

(6) Comments or information that may assist us in identifying or clarifying the primary constituent elements and the resulting physical and biological features essential to the conservation of the Tumbling Creek cavesnail.

(7) How the proposed critical habitat boundaries could be refined to more closely circumscribe the landscapes identified as essential.

(8) Information on the potential effects of climate change on the Tumbling Creek cavesnail and its habitat.

(9) Any foreseeable impacts on energy supplies, distribution, and use resulting from the proposed designation and, in particular, any impacts on electricity production, and the benefits of including or excluding any particular areas that exhibit these impacts.

(10) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

(11) Information on whether the DEA makes appropriate assumptions regarding current practices and any regulatory changes that likely may occur if we designate proposed critical habitat for the Tumbling Creek cavesnail.

(12) Information on the accuracy of our methodology in the DEA for distinguishing baseline and incremental costs, and the assumptions underlying the methodology.

(13) Information on whether the DEA correctly assesses the effect on regional costs associated with any land use controls that may result from the proposed designation of critical habitat for the Tumbling Creek cavesnail.

(14) Information on whether the proposed designation of critical habitat will result in disproportionate economic impacts to specific areas or small businesses, including small businesses in the land development sector in Taney County.

(15) Information on whether the DEA identifies all costs that could result from the proposed designation of critical habitat for the Tumbling Creek cavesnail.

(16) Economic data on the incremental costs of designating a particular area as critical habitat.

If you submitted comments or information on the proposed rule (75 FR 35751) during the initial comment period from June 23, 2010, to August 23, 2010, please do not resubmit them. We will incorporate them into the public record as part of this comment period, and we will fully consider them in the preparation of our final determination. Our final determination concerning critical habitat will take into consideration all written comments and any additional information we receive during both comment periods. On the basis of public comments, we may, during the development of our final determination, find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

You may submit your comments and materials concerning our proposed rule, the associated DEA, and our amended required determinations by one of the methods listed in the **ADDRESSES** section. We will not consider comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

If you submit a comment via *http://www.regulations.gov*, your entire comment—including any personal identifying information—will be posted on the Web site. If you submit a hard copy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hard copy comments on *http://www.regulations.gov*.

Comments and materials we receive (and have received), as well as supporting documentation we used in preparing the proposed rule and DEA, will be available for public inspection on *http://www.regulations.gov* (Docket Number FWS–R3–ES–2010–0042), or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Columbia, Missouri Ecological Services Field Office (*see* **FOR FURTHER INFORMATION CONTACT**).

You may obtain copies of the proposed rule and DEA by mail from the Columbia, Missouri Ecological Services Field Office (*see* **FOR FURTHER INFORMATION CONTACT**), by visiting the Federal eRulemaking Portal at *http://www.regulations.gov* (Docket Number FWS–R3–ES–2010–0042), or on our Web site at *http://www.fws.gov/midwest/Endangered*.

Background

It is our intent to discuss only those topics directly relevant to the proposed designation of critical habitat for the Tumbling Creek cavesnail in this document. For more information on previous Federal actions concerning the Tumbling Creek cavesnail, refer to the proposed designation of critical habitat published in the **Federal Register** on June 23, 2010 (75 FR 35751). Additional information on the Tumbling Creek cavesnail may also be found in the final listing rule published in the **Federal Register** on August 14, 2002 (67 FR 52879). These documents are available on our Web site at *http://www.fws.gov/midwest/Endangered*.

On December 27, 2001 (66 FR 66803), we published an emergency rule to list the Tumbling Creek cavesnail, due to water degradation and a precipitous decline in the cavesnail populations. The species was subsequently listed as endangered on August 14, 2002 (67 FR 52879). At the time, critical habitat was not designated in order to allow the Service to concentrate its resources on immediate protections needed for the conservation of the species. On August 11, 2008, the Institute for Wildlife Protection and Crystal Grace Rutherford filed a lawsuit against the Secretary of the Interior for our failure to timely designate critical habitat for the Tumbling Creek cavesnail (*Institute for Wildlife Protection et al.* v. *Kempthorne*, (Case No. CV–07–01202–CMP)). In a court-approved settlement agreement, we agreed to submit to the **Federal Register** a prudency determination, and if the designation was found to be prudent, a proposed designation of critical habitat, by June 30, 2010, and a final designation by June 30, 2011. On June 23, 2010, we proposed to designate 25 acres of Tumbling Creek and associated springs as critical habitat.

The Tumbling Creek cavesnail is a small, white, blind, aquatic snail, restricted to a single cave stream in Tumbling Creek Cave in Taney County, southwestern Missouri. Significant declines in the snail's population have been documented since 1996. The Tumbling Creek cavesnail is likely threatened by habitat degradation through diminished water quality from upstream locations within the unprotected or improperly managed areas within the cave's delineated recharge zone. The species may also be threatened with competition from limpets or from changes in the cave's normal hydrological cycles due to recent droughts.

Section 3 of the Act defines critical habitat as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting areas designated as critical habitat must consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

Possible Exclusions From Critical Habitat and Draft Economic Analysis

Section 4(b)(2) of the Act requires that we designate critical habitat based upon the best scientific data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species. We have not proposed to exclude any areas from critical habitat. However, the final decision on whether to exclude any areas will be based on the best scientific data available at the time of the final designation, including information obtained during the comment period and information about the economic impact of designation. Accordingly, we have prepared a draft economic analysis concerning the proposed critical habitat designation (DEA), which is available for review and comment (*see* **ADDRESSES** section).

The intent of the DEA is to identify and analyze the potential economic impacts associated with the proposed designation of critical habitat for the Tumbling Creek cavesnail. The DEA quantifies the economic impacts of all potential conservation efforts for the Tumbling Creek cavesnail; some of these costs will likely be incurred regardless of whether we designate critical habitat. The economic impact of the proposed designation of critical habitat for the Tumbling Creek cavesnail is analyzed by comparing scenarios both "with critical habitat" and "without critical habitat." The "without critical habitat" scenario represents the baseline for the analysis, considering protections already in place for the species (for example, under the Federal listing and other Federal, State, and local regulations). The baseline, therefore, represents the costs incurred regardless of whether critical habitat is designated and may include costs incurred in the future. The "with critical habitat" scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts are those not expected to occur absent the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat above and beyond the baseline costs; these are the costs we may consider in the final designation of critical habitat. The analysis looks retrospectively at baseline impacts incurred since we listed the species, and forecasts both baseline and incremental impacts likely to occur if we finalize the proposed designation of critical habitat for the Tumbling Creek cavesnail. For a further description of the methodology of the analysis, *see* Chapter 2, "Framework for the Analysis," of the DEA.

The current DEA estimates the foreseeable economic impacts of the proposed designation of critical habitat for the Tumbling Creek cavesnail by identifying the potential resulting incremental costs. The DEA analyzed economic impacts of Tumbling Creek cavesnail conservation efforts on the following activities: Water management and other activities that may affect water quality such as road construction and maintenance; oil, gas, and utility easements; forest and pasture management; alteration of septic systems; and effluent discharges. It also assessed possible indirect impacts to economic activities as the result of possible applications of other State and local laws and regulatory uncertainty or delay. The DEA considers future baseline and incremental impacts over the next 20 years (2011 to 2030).

The DEA estimates that minimal economic impacts are likely to result from the designation of critical habitat. The main reason for this conclusion is that the private landowners of all surface critical habitat areas and the Tumbling Creek Cave Foundation, which owns lands within much of the cave's recharge area, have been undertaking extensive restoration and conservation efforts for the benefit of the cavesnail. Those lands have recently been enrolled in a voluntary conservation program that encourages the landowners to undertake and continue additional conservation activities. These efforts are expected to continue after critical habitat designation.

An additional reason that minimal economic impacts are likely to result from critical habitat designation is that, while cavesnails may not always be detected through surveys within critical habitat every year, the Service assumes the species is present within the entire area proposed for designation. Thus, we anticipate that Action agencies will initiate consultation regarding the cavesnail regardless of whether critical habitat is designated. Activities taking place outside of the proposed designation but within the recharge area for the cave may affect the cavesnail.

These projects may include road construction projects, U.S. Forest Service activities, or management changes at Bull Shoals reservoir. These types of projects are already subject to section 7 consultation under the jeopardy standard; therefore, the only incremental costs are those resulting from the additional administrative costs by the Service and action agency to include an adverse modification finding within the Biological Opinion and Biological Assessment as part of a formal consultation. As a result, the total incremental costs associated with this rule are estimated to be $4,420 annually over the next 20 years, assuming a 7 percent discount rate.

The DEA also discusses the potential benefits associated with the designation of critical habitat. The primary intended benefit of critical habitat is to support the conservation of endangered and threatened species, such as the Tumbling Creek cavesnail. However, economic benefits are not quantified or monetized in the DEA. As described in the DEA, designation of critical habitat is not anticipated to result in additional conservation efforts for the cavesnail. As a result, no changes in economic activity or land management are expected to result from critical habitat designation.

The DEA considered both economic efficiency and distributional effects. In the case of habitat conservation, efficiency effects generally reflect the "opportunity costs" associated with the commitment of resources to comply with habitat protection measures (*e.g.*, lost economic opportunities associated with restrictions on land use). The DEA also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on government agencies, small entities, and the energy industry. We can use this information to assess whether the effects of the proposed designation might unduly burden a particular group or economic sector.

As we stated earlier, we are soliciting data and comments from the public on the DEA, as well as on all aspects of the proposed designation of critical habitat, and our amended required determinations. We may revise the proposed rule or the economic analysis to incorporate or address information we receive during this public comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided the exclusion will not result in the extinction of the species.

Required Determinations—Amended

In our proposed rule dated June 23, 2010 (75 FR 35751), we indicated that we would defer our determination of compliance with several statutes and executive orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders became available in the DEA. We have now made use of the DEA to make these determinations. In this document, we affirm the information in our proposed rule concerning Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 12630 (Takings), E.O. 13132 (Federalism), E.O. 12988 (Civil Justice Reform), the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951). Based on the DEA data, we are also affirming our required determinations made in the proposed rule concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), and E.O. 13211 (Energy, Supply, Distribution, and Use).

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 802(2)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Based on our DEA of the proposed designation, we provide our analysis for determining whether the proposed rule would result in a significant economic impact on a substantial number of small entities. Based on comments we receive, we may revise this determination as part of a final rulemaking.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

To determine if the proposed designation of critical habitat for the Tumbling Creek cavesnail would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities, such as residential and commercial development. In order to determine whether it is appropriate for our agency to certify that this rule would not have a significant economic impact on a substantial number of small entities, we considered each industry or category individually. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect the Tumbling Creek cavesnail. If the proposed critical habitat designation is finalized, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In the DEA of the proposed designation of critical habitat, we evaluated the potential economic effects resulting from implementation of conservation actions related to the proposed designation of critical habitat.

Although the DEA forecasts approximately $50,100 in incremental impacts over the next 20 years, these impacts are expected to be borne by Federal and State agencies, including the U.S. Forest Service, U.S. Army Corps of Engineers, the Natural Resource Conservation Service, and the Missouri Department of Transportation. Such agencies are not considered small entities.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. Information for this analysis was gathered from the Small Business Administration, stakeholders, and the Service. For the reasons discussed above, and based on currently available information, we certify that if promulgated, the proposed designation would not have a significant economic impact on a substantial number of small entities. Therefore, an initial regulatory flexibility analysis is not required.

Executive Order 13211—Energy Supply, Distribution, and Use

Executive Order 13211 requires an agency to prepare a Statement of Energy Effects when undertaking certain actions. We implement this executive order using the Office of Management and Budget's guidance which outlines nine outcomes that may constitute "a significant adverse effect" when compared to no regulatory action. As discussed in chapter 3, the DEA finds that this proposed critical habitat designation is not expected to have any impacts on the energy industry. As a result, a Statement of Energy Effects is not required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act, the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local or Tribal governments," with two exceptions. It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local and Tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding," and the State, local, or Tribal governments "lack authority" to adjust accordingly. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) as a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program."

Critical habitat designation does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. Designation of critical habitat may indirectly impact non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action that may affect designated critical habitat. However, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) As discussed in the DEA of the proposed designation of critical habitat for the Tumbling Creek cavesnail, we do not believe that this rule would significantly or uniquely affect small governments because it would not produce a Federal mandate of $100 million or greater in any year; that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The DEA concludes that incremental impacts expected to result from the designation of critical habitat are limited to additional administrative effort to consider adverse modification in section 7 consultation. In total, these impacts are estimated at $50,100 in present value terms over the next 20 years, or $4,420 on an annualized basis (discounted at seven percent). Consequently, we do not believe critical habitat designation would significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

References Cited

A complete list of all references we cited in the proposed rule and in this document is available on the Internet at *http://www.regulations.gov* at Docket No. FWS–R3–ES–2010–0042 or from the Columbia, Missouri Ecological Services Field Office (*see* **FOR FURTHER INFORMATION CONTACT** section).

Authors

The primary authors of this notice are staff members of the Columbia, Missouri Ecological Services Field Office (*see* **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: December 30, 2010.

Will Shafroth,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2011–468 Filed 1–11–11; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 76, No. 8
Wednesday, January 12, 2011

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

DEPARTMENT OF AGRICULTURE

Forest Service

Ketchikan Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ketchikan Resource Advisory Committee will meet in Ketchikan, Alaska, March 29, 2011. The purpose of this meeting is to discuss potential projects under the Secure Rural Schools and Community Self-Determination Act of 2008.

DATES: The meeting will be held March 29, 2011 at 6 p.m.

ADDRESSES: The meeting will be held at the Ketchikan Misty Fiords Ranger District Office, 3031 Tongass Avenue, Ketchikan, Alaska. Send written comments to Ketchikan Resource Advisory Committee, c/o District Ranger, USDA Forest Service, 3031 Tongass Ave., Ketchikan, AK 99901, or electronically to Diane Daniels, RAC Coordinator at *ddaniels@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Diane Daniels, RAC Coordinator Ketchikan-Misty Fiords Ranger District, Tongass National Forest, (907) 228–4105.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: January 4, 2011.

Jeff DeFreest,

District Ranger.

[FR Doc. 2011–325 Filed 1–11–11; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

El Dorado County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The El Dorado County Resource Advisory Committee will meet in Placerville, California. 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 Agenda for the meeting includes review of the October field trip, administrative costs update and a report out on outreach for proposals.

DATES: The meeting will be held on January 24, 2011 at 6 p.m.–9 p.m.

ADDRESSES: The meeting will be held at the El Dorado Center of Folsom Lake College, Community Room, 6699 Campus Drive, Placerville, CA 95667. Written comments should be sent to Frank Mosbacher, Forest Supervisor's Office, 100 Forni Road, Placerville, CA 95667. Comments may also be sent via e-mail to *fmosbacher@fs.fed.us,* or via facsimile to 530–621–5297.

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 100 Forni Road, Placerville, CA 95667. Visitors are encouraged to call ahead to 530–622–5061 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Frank Mosbacher, Public Affairs Officer, Eldorado National Forest Supervisor's Office, 530–621–5230.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: Preliminary "RAC group" voting to determine which projects will move forward for further consideration by the RAC. The purpose of this activity is to reduce the number of projects requiring presentations before the RAC at future meetings which will be scheduled in February 2011. This will not be an activity that will determine which projects will be officially recommended to the Eldorado National Forest and Lake Tahoe Basin Management Unit Forest Supervisors for approval. RAC voting to determine which projects will be recommended to the Forest Supervisors will take place after the presentations in February 2011. More information will be posted on the Eldorado National Forest Web site *@http://www.fs.fed.us/r5/Eldorado.* A public comment opportunity will be made available following the business activity. Future meetings will have a formal public input period for those following the yet to be developed public input process.

Dated: January 5, 2011.

Ramiro Villalvazo,

Forest Supervisor.

[FR Doc. 2011–364 Filed 1–11–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DoC) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the emergency provisions of the Paperwork Reduction Act (44 (44 U.S.C. Chapter 35)).

Agency: National Institute of Standards and Technology (NIST).

Title: NIST Summer Institute for Middle School Science Teachers (NIST Summer Institute) and NIST Research Experience for Teachers (NIST RET) Application Requirements.

OMB Control Number: None.

Form Number(s): NIST–1103.

Type of Request: Emergency submission.

Burden Hours: 400.

Number of Respondents: 100.

Average Hours per Response: 4.

Needs and Uses: The NIST Summer Institute and the NIST RET are competitive financial assistance (cooperative agreement) programs designed to support middle school science teachers to participate in hands-on activities, lectures, tours, visits, or in scientific research with scientists and engineers in NIST laboratories in

Gaithersburg, Maryland, that will encourage them to inspire students to pursue careers in science, technology, engineering, and mathematics (STEM) fields.

To receive funding, nominated teachers must submit applications for potential selection to participate in the NIST Summer Institute or the NIST RET. This request is for the information collection requirements associated with applying for funding. The information will be used to perform the requisite reviews of the applications to determine if an award should be granted. In order to begin and complete the application and award processes before the end of this school year, NIST is requesting approval by February 4, 2011.

Once OMB approval is received, NIST will announce competitions under these two programs in February 2011, applications will be received in March, and applications can be reviewed and funding decisions made in time to start the programs in July. The regular Paperwork Reduction Act process would delay the collection beyond this timeframe.

Affected Public: Middle school (Grades 6–8) science teachers in a U.S. public school district or U.S. accredited private educational institution.

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Jasmeet Seehra, (202) 395–3123.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, U.S. Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent by February 4, 2011 to Jasmeet Seehra, OMB Desk Officer, FAX number (202) 395–5167 or via the Internet at *Jasmeet_K._Seehra@omb.eop.gov.*

Dated: January 6, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–399 Filed 1–11–11; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and opportunity for public comment.

Pursuant to Section 251 of the Trade Act of 1974, as amended (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of these firms contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[12/09/2010 through 1/6/2011]

Firm name	Address	Date accepted for investigation	Products
BB Diversified Services, Ltd. dba IceAge Manufacturing, Inc.	34621 Highway 11 West, Roseau, MN 56751.	09–Dec–10	The firm manufactures rails, A-arms, axels and various other components for snowmobiles.
Concept Works, Inc	W3126 State Highway 32, Elkhart Lake, WI 53020.	28–Dec–10	The firm manufactures industrial products, displays, commercial furnishings and other custom products.
Green Gear Cycling, Inc dba Bike Friday.	3364 West 11th Street, Eugene, OR 97402.	05–Jan–11	The firm manufacturers bicycles, specifically designed for ease of travel (folding bicycles).
J. R. Setina Manufacturing Company, Inc.	2926 Yelm Highway, SE., Olympia, WA 98501.	06–Jan–11	The firm manufactures parts and accessories of motor vehicle bodies.
Jensen Tuna Inc	5885 Highway 311, Houma, LA 70360.	06–Jan–11	The firm processes fresh fish from basic cleaning to custom cuts and packaging.
Matson Industries, Inc	132 Main Street, Brookville, PA 15825.	06–Jan–11	The firm manufactures furniture grade hardwood lumber and logs.
Quality Metal Finishing Co	421 N. Walnut Street, Byron, IL 61010.	21–Dec–10	The firm manufactures chrome plated zinc castings such as kitchen faucets, commercial hardware, bathroom fixtures and motorcycle components.
RW Chang & Co. Inc	1202 Fountain Parkway, Grand Prairie, TX 75050.	05–Jan–11	The firm performs glass cutting, mat cutting, mounting, stretching and fitting of frames.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 7106, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Dated: January 6, 2011.

Bryan Borlik,

Program Director.

[FR Doc. 2011–503 Filed 1–11–11; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year ("Sunset") Review

Correction

In notice document 2010–27522 beginning on page 67082 in the issue of Monday, November 1, 2010, make the following correction:

On page 67082, in the table, in the fourth column, the sixth entry "Certain Cut-to-Length Carbon-Quality Steel Plate (3rd Review)" should read "Granular Polytetrafluoroethylene (3rd Review)".

[FR Doc. C1–2010–27522 Filed 1–11–11; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Estuarine Research Reserve System

AGENCY: Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Notice of Public Comment Period for the revised Jobos Bay National Estuarine Research Reserve Management Plan.

SUMMARY: Notice is hereby given that the Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce is announcing a thirty day public comment period for the review of the revised Jobos Bay National Estuarine Research Reserve Management Plan.

The Jobos Bay National Estuarine Research Reserve was designated in 1981 pursuant to Section 315 of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1461. The Reserve has been operating in partnership with the Puerto Rico Department of Natural and Environmental Resources under a management plan approved in 2000. Pursuant to 15 CFR Section 921.33(c), a state must revise their management plan every five years. The submission of this plan fulfills this requirement and sets a course for successful implementation of the goals and objectives of the Reserve.

Since 2000, the Reserve has added an estuary training program that delivers science-based information to key decision makers in Puerto Rico; completed a characterization of the Reserve's benthic habitats and watershed land use and land cover; acquired new parcels of land behind the visitor center and in the offshore keys; constructed a new pier to support reserve operations; and expanded the monitoring, stewardship and education programs.

Notable updates in the 2011–2016 management plan include priorities for new facilities, updated programmatic objectives, and a boundary expansion to include the lands that have been purchased since the last management plan was approved. The additional parcels included in the reserve boundary include 416.9 acres of mangrove, upland forest and salt flat habitats.

The revised management plan outlines the administrative structure; the education, stewardship, and research goals of the Reserve; and the plans for future land acquisition and facility development to support Reserve operations. This management plan describes how the strengths of the Reserve will focus on several issues relevant to the Jobos Bay, Puerto Rico and the broader Caribbean region, including sea level rise and other effects of climate change, development pressure, and tourism.

FOR FURTHER INFORMATION CONTACT: Nina Garfield at (301) 563–1171 or Laurie McGilvray at (301) 563–1158 of NOAA's National Ocean Service, Estuarine Reserves Division, 1305 East-West Highway, N/ORM5, 10th floor, Silver Spring, MD 20910. For copies of the Jobos Bay Management Plan revision, visit: *http://jbnerr.org.*

Dated: December 22, 2010.

Donna Wieting,

Director, Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration.

[FR Doc. 2011–506 Filed 1–11–11; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA137

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Joint Canada-U.S. Review Panel (Panel) for Pacific hake/whiting will hold a work session that is open to the public.

DATES: The Joint Canada-U.S. Review Panel will be held beginning at 9 a.m., Monday, February 7, 2011 and end at 5:30 p.m. or as necessary to complete business for the day. The Panel will reconvene on Tuesday, February 8 and will continue through Friday, February 11, 2011 beginning at 8 a.m. and ending at 5:30 p.m. each day, or as necessary to complete business. The Panel will adjourn by noon on Friday, February 11.

ADDRESSES: The Joint Canada-U.S. Review Panel for Pacific hake/whiting will be held at the Hotel Deca, 4507 Brooklyn Avenue, NE., Seattle, WA 98105; *telephone:* (1–800) 899–0251.

Council address: Pacific Fishery Management Council (Pacific Council), 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Ms. Stacey Miller, NMFS Northwest Fisheries Science Center; *telephone:* (541) 961–8475; or Mr. John DeVore, Pacific Fishery Management Council; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the Joint Canada-U.S. Review Panel for Pacific hake/whiting is to review draft 2011 stock assessment documents and any other pertinent information for Pacific hake/whiting, work with the Stock Assessment Team to make necessary revisions, and produce a Joint Canada-U S. Review Panel report for use by the Pacific Council family and other interested persons for developing management recommendations for 2011 fisheries. No management actions will be decided by the Panel. The Panel's role will be development of recommendations and reports for consideration by the Pacific Council at its March meeting in Vancouver, WA.

Although non-emergency issues not contained in the meeting agenda may come before the Panel participants for discussion, those issues may not be the subject of formal Joint Canada-U.S. Review Panel action during this meeting. Panel action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Panel participants' intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: January 7, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–520 Filed 1–11–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA139

North Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory committees will hold public meetings, January 31–February 8, 2011 at the Renaissance Hotel, 515 Madison Street, South Room, Seattle, WA.

DATES: The Council will begin its plenary session at 8 a.m. on Wednesday, February 2 continuing through Monday, February 7. The Council's Advisory Panel (AP) will begin at 8 a.m., Monday, January 31 and continue through Thursday, February 3 (Northwest Room). The Scientific and Statistical Committee (SSC) will begin at 8 a.m. on Monday, January 31 and continue through Wednesday, February 2, 2011 (East Room). The Enforcement Committee will meet Tuesday, February 1 from 1 p.m. to 5 p.m. (Marion Room). The Ecosystem Committee will meet Thursday, February 3, 2010 from 1 p.m. to 5 p.m. (James Room). All meetings are open to the public, except executive sessions.

ADDRESSES: The meetings will be held at the Renaissance Hotel, 515 Madison Street, Seattle, WA.

Council address: North Pacific Fishery Management Council, 605 W. 4th Avenue, Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: David Witherell, Council staff, telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: Council Plenary Session: The agenda for the Council's plenary session will include the following issues. The Council may take appropriate action on any of the issues identified.

Reports:

1. Executive Director's Report (including Statement of Organization, Practices and Procedures (SOPP)).

NMFS Management Report (including update on BSAI Freezer longline catch accounting, white paper on electronic monitoring).

Alaska Fishery Science Center Annual Report (include sablefish recruitment factors discussion paper and TRAWLEX report).

Alaska Department of Fish & Game Report.

International Pacific Halibut Commission Report.

United States Coast Guard Report.

United States Fish & Wildlife Service Report.

Protected Species Report (including update on Steller Sea Lion (SSL); Endangered Species Act (ESA) listed salmon).

American Fisheries Act (AFA) Cooperative reports.

2. Halibut/Sablefish Individual Fishing Quota (IFQ) Program: Initial review on Halibut/Sablefish Hired Skipper; Final action on Community Quota Entity (CQE) area 3A D class purchase.

3. Amendment 80 Program: Discussion paper on Am 80 Replacement Vessel Sideboards; Final action on Amendment 80 Groundfish Retention Standard (GRS) Program Changes; Report on flexibility of using unspecified reserves in specification process to address Am 80 hard caps.

4. Salmon Bycatch: Preliminary review BSAI Chum Salmon Bycatch; Review workplan for GOA Chinook Salmon Bycatch.

5. Essential Fish Habitat (EFH): Discussion paper/finalize alternatives on Habitat Area Particular Concern (HAPC)—Skate sites; Initial review for EFH Amendment(T).

6. Aleutian Island (AI) Pacific Cod Issues: Discussion paper on BS&AI Pacific cod Split take action as necessary; Initial review AI Pacific cod processing Sideboards; (postponed).

7. BSAI Crab Management: Final action on Right of First Refusal; Initial Review of IFQ/Individual Processing Quota (IPQ) Application Deadline.

8. Miscellaneous Groundfish Issues: Discussion paper on Sablefish Recruitment Factors; Discussion paper on GOA Trawl Sweep Modifications; Estimation of non-target species catch in halibut fishery (SSC only); Initial review on Octopus management(T).

9. Staff Tasking: Review Committees and tasking.

10. Other Business.

The SSC agenda will include the following issues:

1. Salmon Bycatch.
2. EFH.
3. AI Pacific Cod.
4. BSAI Crab Management.
5. Miscellaneous Groundfish.
6. Economic SAFE review.
7. NOAA Bering Sea Fisheries Research Foundation Survey results.

The Advisory Panel will address most of the same agenda issues as the Council, except for #1 reports. The Agenda is subject to change, and the latest version will be posted at *http://www.alaskafisheries.noaa.gov/npfmc/*.

Although non-emergency issues not contained in this agenda may come before these groups for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: January 7, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–521 Filed 1–11–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA136

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Ad Hoc Groundfish Process Improvement Committee (PIC) will hold a working meeting, which is open to the public.

DATES: The PIC meeting will be held Thursday, February 3, 2011 from 8:30 a.m. until business for the day is completed. The PIC meeting will reconvene Friday, February 4, from 8:30 a.m. until noon.

ADDRESSES: The PIC meeting will be held at the Pacific Fishery Management Council office, Large Conference Room, 7700 NE Ambassador Place, Suite 101, Portland, Oregon 97220–1384.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Ms. Kelly Ames or Mr. John DeVore, Groundfish Management Staff Officers; *telephone:* (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the PIC work session is to develop an optimum detailed process and schedule for the 2013–14 groundfish biennial cycle for harvest specifications and management measures. The PIC will also consider whether an amendment to the Groundfish Fishery Management Plan should be pursued by the Council for long-term solutions. The PIC recommendations will be brought forward for Council consideration and action at its April 9–14 meeting in San Mateo, CA. The PIC may also address other assignments relating to groundfish management. No management actions will be decided by the PIC.

Although non-emergency issues not contained in the meeting agenda may come before the PIC for discussion, those issues may not be the subject of formal PIC action during this meeting. PIC action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the PIC's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: January 7, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–519 Filed 1–11–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA138

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Pacific Council) will hold two consecutive meetings related to west coast CPS fisheries. The Coastal Pelagic Species Management Team (CPSMT) will meet February 1–2, 2011; and the CPS Methodology Review Panel will meet February 3–5, 2011. Both meetings are open to the public.

DATES: The CPSMT meeting will be held Tuesday, February 1 through Wednesday, February 2, 2011. Business will begin each day at 8:30 a.m. and conclude at 5 p.m. or until business for the day is completed. The CPS Methodology Review Panel will meet February 3–5, 2011. Business will begin each day at 8:30 a.m. and conclude at 5 p.m. or until business for the day is completed.

ADDRESSES: The meetings will be held in the Large Conference Room of the National Marine Fisheries Service's Southwest Fisheries Science Center, Torrey Pines Campus; 8604 La Jolla Shores Drive, La Jolla, CA 92037.

FOR FURTHER INFORMATION CONTACT: Kerry Griffin, Staff Officer; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the CPSMT meeting is: (1) To initiate discussion of potential changes to the Pacific sardine Harvest Control Rule, based on recent evidence indicating that using the sea surface temperature at Scripps Pier may be an unreliable basis for setting harvest guidelines; (2) to discuss potential improvements to the market squid Acceptable Biological Catch (ABC) and Overfishing Limit (OFL); (3) election of officers; and (4) to initiate discussion and develop a statement for the March, 2011 Council meeting regarding potential requests to utilize the Council's 4,200 mt Exempted Fishing Permit set-aside. Other issues relevant to coastal pelagic species fisheries management and science may be addressed as time permits.

The purpose of the CPS Methodology Review Panel meeting is to consider acoustic-trawl survey and data analysis methods, to assess their utility in stock assessment models to monitor trends at the population level for Pacific sardine and other CPS stocks.

Although non-emergency issues not contained in the meeting agenda may come before the CPSMT and Methodology Review Panel for discussion, those issues may not be the subject of formal action during this meeting. CPSMT and Methodology Review Panel action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the CPSMT's and Methodology Review Panel's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: January 7, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–518 Filed 1–11–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Estuarine Research Reserve System; North Inlet-Winyah Bay, SC and San Francisco Bay, CA; Revised Management Plans

AGENCY: Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Notice of final approval and availability of the revised management plans for the following National Estuarine Research Reserves: North Inlet-Winyah Bay, SC and San Francisco Bay, CA.

SUMMARY: The Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce has approved the Management Plan

Revisions of the North Inlet-Winyah Bay National Estuarine Research Reserve and San Francisco Bay National Estuarine Research Reserve.

The revised management plan for the North Inlet-Winyah Bay, SC National Estuarine Research Reserve outlines the administrative structure; the education, training, stewardship, and research programs of the reserve; and the plans for future land acquisition and facility development to support reserve operations. The goals described in this plan provide a framework that supports program integration based on priority issues defined by the reserve. The objectives described in this plan address the most critical coastal issues in North Inlet-Winyah Bay such as impacts from coastal and watershed development, climate events on coastal ecosystems and human communities, and invasive species and habitat loss impacts on biodiversity.

Since the last approved management plan in 1992, the reserve has become fully staffed; added a Coastal Training Program that delivers science-based information to key decision makers; and added significant monitoring of emergent marsh vegetation, invasive species, water quality, and bird populations. In addition to programmatic and staffing advances, the reserve upgraded its headquarters building with a 4,500 square foot structure to support research, stewardship, and the coastal training programs that includes six offices, a monitoring lab, and library. In cooperation with the Belle W. Baruch Foundation, a 12,500 square foot education facility was developed to support reserve educational programs and includes interpretive exhibits, aquaria, classrooms, and education staff offices, as well as an outdoor classroom. This plan can be accessed at *http://www.northinlet.sc.edu*.

The revised management plan for the San Francisco Bay National Estuarine Research Reserve outlines a framework of overarching goals and program specific objectives that will guide the education, training, research, and developing stewardship programs of the reserve; describes land acquisition and boundary expansion; as well as outlines plans for facility use and development to support reserve operations. The goals and objectives put forth in this plan focus programmatic efforts on four critical issues that affect the reserve's ability to conserve ecological communities in support of the Bay's growing population: Climate change, species interactions, water quality, and habitat restoration. Broadly, the goals for each of these issues include increasing knowledge, understanding effects, and improving the ability of partners and stakeholders to respond to these issues. The goals described in this plan provide a framework that supports program integration for collaborative management of the San Francisco Bay National Estuarine Research Reserve.

Since the last approved management plan in 2003, the reserve has hired a full complement of core staff; established a research lab, fully operational System-wide Monitoring Program, and Graduate Research Fellowship Program; added a Coastal Training Program that delivers science-based information to key decision makers; developed education programs focused on sharing estuarine research with non-academic audiences; and constructed facilities to support essential functions of the reserve at its headquarters on the Romberg Tiburon Center campus of San Francisco State University. These facilities include office space for staff, classroom space, laboratory, and meeting facilities. The reserve has also constructed facilities and interpretive exhibits at its components sites, China Camp State Park and Rush Ranch Open Space Preserve, that support on-site research and educational programs. This plan can be accessed at *http://www.sfbaynerr.org*

FOR FURTHER INFORMATION CONTACT: Alison Krepp at (301) 563–7105 or Laurie McGilvray at (301) 563–1158 of NOAA's National Ocean Service, Estuarine Reserves Division, 1305 East-West Highway, N/ORM5, 10th floor, Silver Spring, MD 20910.

Dated: December 22, 2010.

Donna Wieting,

Director, Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration.

[FR Doc. 2011–504 Filed 1–11–11; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Call for Applications for Commerce Spectrum Management Advisory Committee; National Telecommunications and Information Administration, U.S. Department of Commerce

ACTION: Reopening of Application Period.

SUMMARY: The National Telecommunications and Information Administration (NTIA) seeks applications from persons interested in serving on the Department of Commerce's Spectrum Management Advisory Committee (CSMAC) for new two-year terms. This Notice reopens the application period announced in the **Federal Register** on December 7, 2010 (December Notice) in order to identify additional candidates. Any applicant who provided NTIA with the requested materials in response to the December Notice will be considered for appointment and need not resubmit materials, although they are permitted to supplement their applications with new or additional information.

DATES: Applications must be postmarked or electronically transmitted on or before January 31, 2011.

ADDRESSES: Persons wishing to submit applications as described below should send that information to: Joe Gattuso, Designated Federal Officer, by e-mail to *spectrumadvisory@ntia.doc.gov;* by U.S. mail or commercial delivery service to: Office of Policy Analysis and Development, National Telecommunications and Information Administration, 1401 Constitution Avenue, NW., Room 4725, Washington, DC 20230; or by facsimile transmission to (202) 482–6173.

FOR FURTHER INFORMATION CONTACT: Joe Gattuso at (202) 482–0977, or *jgattuso@ntia.doc.gov.*

SUPPLEMENTARY INFORMATION: The CSMAC was first chartered in 2005 under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, to carry out the functions of the National Telecommunications and Information Administration Act, 47 U.S.C. 904(b). The CSMAC advises the Assistant Secretary of Commerce for Communications and Information on a broad range of issues regarding spectrum policy.

The Secretary of Commerce appoints members to the CSMAC for two year terms. They are experts in radio spectrum policy, and do not represent any organization or interest, and serve in the capacity of Special Government Employees. Members do not receive compensation or reimbursement for travel or for per diem expenses. Members may not be federally registered lobbyists. Previously, the charter allowed CSMAC to have up to 20 members. The renewed charter, effective April 6, 2009, allows up to 25 members to serve on the CSMAC.

On December 7, 2010, NTIA published a Notice in the **Federal Register** seeking additional persons interested in appointment, with applications due January 10, 2011

(December Notice): 75 FR 75967 (Dec. 7, 2010), available at *http://www.ntia.doc.gov/notices/2010/FR_CSMAC_Callfor Applications_12072010.pdf.* This Notice reopens the application period in order to identify additional candidates. The December Notice sought applicants for vacancies that will occur when the appointments of 18 members expire on January 13, 2011.

Any applicant who provided NTIA with the requested materials in response to the December Notice will be considered for appointment and need not resubmit materials, although they are permitted to supplement their applications with new or additional information. The evaluation criteria for selecting members contained in the December Notice shall continue to apply.

All parties wishing to be considered should submit their full name, address, telephone number and e-mail address and a summary of their qualifications that identifies with specificity how their education, training, experience, or other factors would support the CSMAC's work and how their participation would provide balance to the CSMAC. They should also include a detailed resume or curriculum vitae (CV).

Persons may submit applications with the information specified above to Joe Gattuso, Designated Federal Officer, by e-mail or commercial delivery service to Office of Policy Analysis and Development, National Telecommunications and Information Administration, 1401 Constitution Avenue, NW., Room 4725, Washington, DC 20230; or by facsimile transmission to (202) 482–6173.

Dated: January 6, 2011.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2011–423 Filed 1–11–11; 8:45 am]

BILLING CODE 3510–60–P

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the U.S. Commission of Fine Arts is scheduled for 20 January 2011, at 10 a.m. in the Commission offices at the National Building Museum, Suite 312, Judiciary Square, 401 F Street, NW., Washington, DC 20001–2728. Items of discussion may include buildings, parks and memorials.

Draft agendas and additional information regarding the Commission are available on our Web site: *http://www.cfa.gov.* Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Thomas Luebke, Secretary, U.S. Commission of Fine Arts, at the above address; by e-mailing *staff@cfa.gov;* or by calling 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated: January 4, 2011, in Washington, DC.

Frederick J. Lindstrom,

Assistant Secretary.

[FR Doc. 2011–251 Filed 1–11–11; 8:45 am]

BILLING CODE 6330–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), has submitted a public information collection request (ICR) entitled the National Service Trust Voucher and Payment Request Form to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Bruce Kellogg, at (202) 606–6954 or e-mail to *bkellogg@cns.gov.* Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 606–3472 between 8:30 a.m. and 5 p.m. Eastern Time, Monday through Friday.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in the **Federal Register**:

(1) *By fax to:* (202) 395–6974, Attention: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; and

(2) *Electronically by e-mail to: smar@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Comments

A 60-day public comment Notice was published in the **Federal Register** on November 2, 2010. This comment period ended January 3, 2011. No public comments were received from this Notice.

Description: The Corporation is seeking approval of the Voucher and Payment Request Form which in paper or electronic version is used by AmeriCorps members to request a payment from their education award account, by schools and lenders to verify eligibility for the payments, and by both parties to verify certain legal requirements. This version provides guidance on recent legislative changes and identification of Veterans Affairs Approved Programs.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: National Service Trust Voucher and Payment Request Form.

OMB Number: 3045–0014.

Agency Number: None.

Affected Public: AmeriCorps members, educational institutions, and lenders.

Total Respondents: 45,000.

Frequency: Once.

Average Time per Response: 5 minutes.

Estimated Total Burden Hours: 3,750 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: January 6, 2011.

William Anderson,

Chief Financial Officer.

[FR Doc. 2011–461 Filed 1–11–11; 8:45 am]

BILLING CODE 6050–$$–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its proposed renewal of its Financial Management Survey. The Financial Management Survey collects information from new grantees about their financial management systems so the Corporation can determine if appropriate systems are in place to manage federal grant funds or, if not, to identify training and technical assistance a new grantee may need to implement appropriate financial systems. The Corporation requires new grantees who have not received Corporation funds before to complete the form.

Copies of the information collection request can be obtained by contacting the office listed in the addresses section of this Notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by March 14, 2011.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service, Office of Grants Management, Attention: Margaret Rosenberry, Director of Grants Management, Room 8207; 1201 New York Avenue, NW., Washington, DC 20525.

(2) By hand delivery or by courier to the Corporation's mailroom at Room 8100 at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Eastern Time, Monday through Friday, except Federal holidays.

(3) By fax to: (202–606–3485) Attention: Margaret Rosenberry, Director of Grants Management

(4) Electronically through *http://www.regulations.gov*. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 606–3472 between 8:30 a.m. and 5 p.m. Eastern Time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Margaret Rosenberry, (202–606–6974) or by e-mail at *prosenbe@cns.gov*.

SUPPLEMENTARY INFORMATION:

The Corporation is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submissions of responses).

Background: Organizations that are receiving Corporation funds for the first time complete the form. It can be completed and submitted via e-mail. The survey requests some existing organizational documents, such as an IRS Form 990 and audited financial statements. Organizations can provide those documents electronically or submit them on paper.

Current Action: The Corporation seeks to renew its current Financial Management Survey with slight revisions. The renewal form requests additional information from the grantee about organizational size and Board of Directors structure and operations. It also requires submission of an organizational chart and Articles of Incorporation.

The information collection will otherwise be used in the same manner as the existing survey form. The Corporation also seeks to continue using the current application until the revised application is approved by OMB. The current application is due to expire on March 31, 2011.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: Financial Management Survey.

OMB Number: 3045–0102.

Agency Number: None.

Affected Public: Organizations that are new grantees to the Corporation.

Total Respondents: 20.

Frequency: Once.

Average Time per Response: Averages 45 minutes (.75 hours) to complete the form and one hour to gather and submit the requested documents.

Estimated Total Burden Hours: 35 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: January 5, 2011.

Margaret Rosenberry,

Office of Grants Management.

[FR Doc. 2011–465 Filed 1–11–11; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; IRFlex Corporation

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to IRFlex Corporation a revocable, nonassignable, exclusive license to practice the field of use of nonlinear, mid-infrared fiber and fiber devices to generate and/or guide mid-infrared sources over long distances (1–500 meters) in the United States, the Government-owned inventions described in U.S. Patent No. 5,949,935: Infrared Optical Fiber Couple, Navy Case No. 78,344.//U.S. Patent No. 6,928,227: Amplification with Chalcogenide Glass Fiber, Navy Case No. 82,848.//U.S. Patent No. 7,133,590: IR Supercontinuum Source, Navy Case No. 96,194.//U.S. Patent No. 7,809,030: OPO Mid-IR Wavelength Converter, Navy Case No. 98,538.//U.S. Patent Application No. 12/179,797: Manufacturing Process for Chalcogenide Glasses, Navy Case No. 96,838.//U.S. Patent Application No. 12/851,377: Microstructured Fiber End, Navy Case No. 98,546.//U.S. Patent Application

No. 12/645,315: Fiber-Based Mid-IR Signal Combiner and Method of Making Same, Navy Case No. 99,613 and any continuations, divisionals or re-issues thereof.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than January 27, 2011.

ADDRESSES: Written objections are to be filed with the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320.

FOR FURTHER INFORMATION CONTACT: Rita Manak, Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone 202–767–3083. Due to U.S. Postal delays, please fax 202–404–7920, e-mail: *rita.manak@nrl.navy.mil* or use courier delivery to expedite response.

Authority: 35 U.S.C. 207, 37 CFR part 404.

Dated: January 6, 2011.

D.J. Werner,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2011–451 Filed 1–11–11; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before February 11, 2011.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov*. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: January 6, 2011.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: Extension.

Title of Collection: Application Package to Request Designation As An Eligible Institution under the Title III and Title V Programs and to Request a Waiver of the Non-Federal Cost-Share Requirement.

OMB Control Number: 1840–0103.

Agency Form Number(s): N/A.

Frequency of Responses: Annually.

Affected Public: Not-for-profit institutions.

Total Estimated Number of Annual Responses: 1,200.

Total Estimated Annual Burden Hours: 8,400.

Abstract: This collection of information is necessary in order for the Secretary of Education to designate an institution of higher education eligible to apply for funding under Title III, Part A and Title V of the Higher Education Act of 1965, as amended. An institution must apply to the Secretary to be designated as an eligible institution. The programs authorized include the Strengthening Institutions Program, the American Indian Tribally Controlled Colleges and Universities, and the Alaskan Native and Native Hawaiian-Serving Institutions Programs, Asian-American and Native American Pacific Islander-Serving Institutions, Native American Serving Institutions, Hispanic-Serving Institutions, Hispanic-Serving Institutions (Science, Technology, Engineering and Math and Articulation), Promoting Postbaccalaureate Opportunities for Hispanic Americans, and Predominantly Black Institutions. These programs award discretionary grants to eligible institutions of higher education so that they might increase their self-sufficiency by improving academic programs, institutional management and fiscal stability.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1894–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 4441. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–500 Filed 1–11–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before February 11, 2011.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, *Attention:* Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov*. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: January 7, 2011.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: New.

Title of Collection: TEACH Grant Supplementary Data Collection.

OMB Control Number: 1840–NEW.

Agency Form Number(s): N/A.

Frequency of Responses: Biennially.

Affected Public: Business or for-profit institutions; Not-for-profit institutions.

Total Estimated Number of Annual Responses: 488.

Total Estimated Annual Burden Hours: 488.

Abstract: The Secretary of Education is required to report to Congress about the TEACH Grant Program, including the student's: (1) Eligible field of study and (2) cost of education. The Secretary includes these data elements as part of a report submitted to congressional authorizing committees with respect to schools and students served by Teach Grant recipient schools. This report is required by Section 420P of the Higher Education Act, as amended by the Higher Education Opportunity Act of 2008.

Requests for copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 4430. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–530 Filed 1–11–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before February 11, 2011.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov*. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: January 6, 2011.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Vocational and Adult Education

Type of Review: Extension.

Title of Collection: Measuring Educational Gain in the National Reporting System for Adult Education.

OMB Control Number: 1830–0567.

Agency Form Number(s): N/A.

Frequency of Responses: Annually.

Affected Public: State, Local, or Tribal Government, State Educational Agencies or Local Educational Agencies.

Total Estimated Number of Annual Responses: 15.

Total Estimated Annual Burden Hours: 600.

Abstract: Title 34 of the Code of Federal Regulations part 462 establish procedures that the Secretary uses when considering the suitability of tests for use in the National Reporting System (NRS) for adult education. The regulations further the Department's implementation of section 212 of the Adult Education and Family Literacy Act (AEFLA). These regulations also include procedures that States and Local eligible providers would follow when using suitable tests. The AEFLA makes accountability for results a central focus of the law. It sets out performance accountability requirements for States and Local programs that measure program

effectiveness on the basis of student academic achievement and other outcomes.

Educational gain, is the key outcome measure in the NRS, which describes students' improvement in literacy skills during instruction. States are required to have their local programs assessments gained by administering standardized pre-post assessments to students, following valid administration procedures. The NRS Guidelines allow states to select the assessments most appropriate for their state, which may be published standardized tests or performance-based assessments. If the state uses performance-based assessments, NRS guidelines require the assessment to have standardized procedures and scoring rubrics that meet accepted psychometric standards.

Requests for copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 4422. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–502 Filed 1–11–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Indian Education Formula Grants to Local Educational Agencies; Office of Elementary and Secondary Education Overview Information; Notice Inviting Applications for Fiscal Year (FY) 2011

Catalog of Federal Domestic Assistance (CFDA) Number: 84.060A.

Dates:

Part I of the Formula Grant Electronic Application System for Indian Education (EASIE) Applications Available: January 13, 2011.

Deadline for Transmittal of Part I Applications: February 14, 2011, 11:59:59 p.m., Washington, DC time.

Part II of Formula Grant (EASIE) Applications Available: April 4, 2011.

Deadline for Transmittal of Part II Applications: May 6, 2011, 11:59:59 p.m., Washington, DC time.

Applicants must meet the deadlines for both Part I and Part II to receive funds as part of the initial grant awards, which are expected to be issued around July 1, 2011. If there are funds remaining after the initial grant awards are made, the Department will give priority to applicants that filed a timely application for Part I, but missed the deadline for Part II. Applicants that missed the Part I deadline will only be funded if there are funds remaining after awards are made to all applicants that met the Part I deadline (including those applicants that met the Part I deadline, but missed the Part II deadline).

Deadline for Intergovernmental Review: July 5, 2011.

SUPPLEMENTARY INFORMATION: *Purpose of Program:* The Indian Education Formula Grants to Local Educational Agencies program provides grants to support local educational agencies (LEAs) and other eligible entities described in this notice in their efforts to reform and improve elementary and secondary school programs that serve Indian students. The Department funds programs designed to help Indian students meet the same State academic content and student academic achievement standards used for all students. In addition, under section 7116 of the Elementary and Secondary Education Act of 1965, as amended (ESEA), the Secretary will, upon receipt of an acceptable plan for the integration of education and related services, authorize the entity receiving the funds under this program to consolidate, in accordance with the entity's plan, the funds for any Federal program exclusively serving Indian children, or the funds reserved under any Federal program to exclusively serve Indian children, that are awarded under a statutory or administrative formula to the entity, for the purpose of providing education and related services to Indian students. Instructions for submitting an integration of education and related services plan are included in the EASIE described elsewhere in this notice under Application Process and Submission Information.

Note: Under the Indian Education Formula Grants to Local Educational Agencies program, applicants are required to develop the project for which application is made (a) in open consultation with parents of Indian children and teachers and, if appropriate, Indian students from secondary schools, including through public hearings held to provide a full opportunity to understand the program and to offer recommendations regarding the program (section 7114(c)(3)(C) of the ESEA); (b) with the participation of a parent committee selected in accordance with section 7114(c)(4) of the ESEA and with the written approval of that parent committee (section 7114(c)(4) of the ESEA).

Eligible Applicants: LEAs, including charter schools authorized as LEAs under State law, certain schools funded by the Bureau of Indian Education of the U.S. Department of the Interior, and Indian tribes under certain conditions, as prescribed by section 7112(c) of the ESEA.

Application Process and Submission Information:

Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section. We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline dates for both Part I and Part II applications, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

Formula Grant EASIE Electronic Application System: Formula Grant EASIE is an easy-to-use, electronic application system. It communicates with data from State submissions to ED*Facts*, the Department's data collection system that contains performance information from State educational agencies about schools and Federal education programs. To the extent that your State has provided the necessary ED*Facts* data files, Formula Grant EASIE will be able to interface with ED*Facts* and pull those LEA-specific data into the application. Additionally, this system allows the Department to review applications and interact online with applicants during the application review and approval process.

The Formula Grant EASIE application is divided into two parts—Part I and Part II.

Part I, Student Count, provides the appropriate data-entry screens to submit your Indian student count totals.

Part II, Program and Budget Information, provides your award

amount based on the Indian student count total submitted under Part I. Part II also enables you to enter student performance data, identify your project's services and activities, and build a realistic program budget based on a known grant amount. Based on student assessment data, you will select your program objectives and services from a variety of menu options that were designed with grantee input.

Registration for Formula Grant EASIE: Entities are encouraged to register as soon as possible at the registration Web site: *http://www.easie.org* to ensure that any potential registration issues are resolved prior to the deadline for the submission of an application. The purpose of the initial registration is to re-activate entities' access to EASIE and to ensure that the correct entity information (*e.g.*, NCES or DUNS numbers) is pre-populated into the first part of EASIE. The registration Web site does not serve as the entity's grant application. The registration may be completed by current, former, and new applicants interested in submitting an Indian Formula Grant EASIE application. For information on how to register, contact the ED*Facts* Partner Support Center listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT.**

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the EASIE system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the EASIE system; and
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Bernard Garcia, U.S. Department of Education, Office of Indian Education, 400 Maryland Avenue, SW., room 3E307, Washington, DC 20202–6335. FAX: (202) 205–0606. Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

Submission of Paper Applications by Mail.

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the U.S. Department of Education, Office of Indian Education. You must mail the original and two copies of your application, on or before the application deadline date, to the Office of Indian Education at the following address: U.S. Department of Education, Office of Indian Education, Attention: CFDA Number 84.060A, 400 Maryland Avenue, SW., Room 3E307, Washington, DC 20202–6335.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

Submission of Paper Applications by Hand Delivery.

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Office of Indian Education, Attention: CFDA Number 84.060A, 400 Maryland Avenue, SW., Room 3E307, Washington, DC 20202–6335.

The Program Office accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Program Office will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Office of Indian Education at (202) 260–3774.

Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry: To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

Estimated Available Funds: The Administration has requested $104,331,000 for this program for FY 2011. The actual level of funding, if any, depends on final Congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $4,000–$2,750,000.

Estimated Average Size of Awards: $82,475.

Estimated Number of Awards: 1,265.

Note: The Department is not bound by any estimates in this notice and funding levels may change based on final appropriations for the program.

Project Period: 12 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Performance Measures: The Secretary has established the following key performance measures for assessing the effectiveness and efficiency of the Indian Education Formula Grants to Local Educational Agencies program: (1) The percentage of American Indian and Alaska Native students in grades four and eight who score at or above the basic level in reading on the National Assessment of Educational Progress (NAEP); (2) the percentage of American Indian and Alaska Native students in grades four and eight who score at or above the basic level in mathematics on the NAEP; (3) the percentage of American Indian and Alaska Native students in grades three through eight meeting State performance standards by scoring at the proficient or the advanced levels in reading and mathematics on State assessments; (4) the difference between the percentage of American Indian and Alaska Native students in grades 3 through 8 at the proficient or advanced levels in reading and mathematics on State assessments and the percentage of all students scoring at those levels; (5) the percentage of American Indian and Alaska Native students who graduate from high school; and (6) the percentage of funds used by grantees prior to award close-out.

FOR FURTHER INFORMATION CONTACT: Contact the ED*Facts* Partner Support Center, telephone: 877–457–3336 (877–HLP–EDEN) or by e-mail at: *eden_OIE@ed.gov*.

If you use a telecommunications device for the deaf (TDD), call the ED*Facts* Partner Support Center, toll free, at 1–888–403–3336 (888–403–EDEN).

Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.*, braille, large print, audiotape, or computer diskette) by contacting the ED*Facts* Partner Support Center.

Electronic Access to This Document: 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) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: 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 on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

Program Authority: 20 U.S.C. 7421 *et seq.*

Dated: January 7, 2011.

Thelma Meléndez de Santa Ana,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2011–529 Filed 1–11–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 10–152–LNG]

Eni USA Gas Marketing LLC; Application for Blanket Authorization To Export Liquefied Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application (Application), filed on November 30, 2010, by Eni USA Gas Marketing LLC (Eni USA), requesting blanket authorization to export liquefied natural gas (LNG) that previously had been imported into the United States from foreign sources in an amount up to the equivalent of 100 billion cubic feet (Bcf) of natural gas. The LNG would be exported from the Cameron LNG Terminal (Cameron Terminal), owned by Cameron, LNG, LLC in Cameron Parish, Louisiana, to any country with the capacity to import LNG via ocean-going carrier and with which trade is not prohibited by U.S. law or policy. Eni USA seeks to export the LNG over a two-year period commencing on the date of the authorization. The application was filed under section 3 of the Natural Gas Act (NGA). Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed at the address listed below in **ADDRESSES** no later than 4:30 p.m., eastern time, February 11, 2011.

ADDRESSES: U.S. Department of Energy (FE–34), Office of Oil and Gas Global Security and Supply, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Larine Moore or Beverly Howard, U.S. Department of Energy (FE–34), Office of Oil and Gas Global Security and Supply, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478; (202) 586–9387.

Edward Myers, U.S. Department of Energy, Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, Room 6B–159, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586–3397.

SUPPLEMENTARY INFORMATION:

Background

Eni USA is a Delaware limited liability company with its principal place of business in Houston, Texas. Eni USA is a wholly-owned subsidiary of Eni Petroleum Co., Inc., a Delaware corporation. Eni USA is engaged in the business of purchasing and marketing supplies of natural gas and LNG. Eni USA is a customer of the Cameron Terminal in Cameron Parish, LA.

On May 12, 2010, FE granted Eni USA blanket authorization to import LNG up to the equivalent of 400 Bcf of natural gas from various international sources for a two-year term beginning on May 12, 2010.[1] Under the terms of the blanket authorization, the LNG may be imported to any LNG receiving facility in the United States or its territories.

Current Application

In the instant application, Eni USA is seeking blanket authorization to export from its capacity at the Cameron Terminal LNG that has been previously imported from foreign sources to any country with the capacity to import LNG via ocean-going carrier and with which trade is not prohibited by U.S. law. Eni USA seeks authorization to export this LNG over a two-year period in an amount up to the equivalent of 100 Bcf of natural gas beginning on the date such authorization is granted, but no later than March 1, 2011. Eni USA states that it does not seek authorization to export domestically-produced LNG or natural gas.

[1] *Eni USA Gas Marketing LLC*, DOE/FE Order No. 2786 issued May 12, 2010.

Public Interest Considerations

In support of its application, Eni USA states that pursuant to section 3 of the NGA, FE is required to authorize exports to a foreign country unless there is a finding that such exports "will not be consistent with the public interest."[2] Eni USA states that there is thus a presumption in favor of a finding that the Application is in the public interest that must be rebutted.[3] Eni USA states further that in reviewing an application to export LNG under Section 3, DOE/FE applies the principles set forth in DOE Delegation Order No. 0204–111, focusing primarily on the domestic need for the gas to be exported, and the Secretary of Energy's natural gas policy guidelines. Eni USA asserts that in its order issued on October 5, 2010, granting LNG export authorization to the Dow Chemical Company, the DOE/FE considered another application to export LNG that was not produced domestically in the U.S. Eni USA asserts that the DOE/FE stated that the fundamental question posed by such an application with respect to the public interest standard was whether the foreign-sourced LNG to be exported is needed to meet domestic demand.[4] Further, Eni USA states that the order pointed to a number of factors indicating that U.S. consumers currently have access to substantial quantities of natural gas sufficient to meet U.S. domestic demand without drawing on the foreign-sourced LNG sought to be re-exported, including the fact that the DOE's Energy Information Agency forecasts increasing U.S. domestic shale gas production through 2015.[5]

As detailed in the application, Eni USA states the blanket export authorization it seeks satisfies the public interest standard, based on the same evidence recognized by DOE/FE in two recent similar applications/orders.[6] Eni USA states that the LNG that may be exported pursuant to the blanket authorization requested in the Application is not needed to meet domestic demand. Eni USA states that granting the requested export authorization will encourage the continued importation of LNG into the United States. Eni USA also states that granting the requested export authorization will not diminish domestically-produced natural gas supplies. Further details can be found in the Application, which has been posted at *http://www.fe.doe.gov/programs/gasregulation/index.html.*

Environmental Impact

Eni USA states that its requested LNG export authorization does not require the construction of any new facilities (or modifications to any existing facilities) at the Cameron Terminal but that the owner of the Cameron Terminal, Cameron LNG, LLC, has filed a still-pending application before the Federal Energy Regulatory Commission seeking authority to provide LNG export services at the Cameron Terminal. Exports of LNG from the Cameron Terminal also would not increase the number of LNG carriers that the Cameron Terminal is designed and authorized to accommodate. Eni USA states that approval of the Application would not constitute a federal action significantly affecting the human environment under the National Environmental Policy Act (NEPA).[7] Eni USA further states, as the DOE/FE has recognized in similar cases, approval of this Application would not require an environmental impact statement or environmental assessment.[8]

DOE/FE Evaluation

This export application will be reviewed pursuant to section 3 of the NGA, as amended, and the authority contained in DOE Delegation Order No. 00–002.00J (Sept. 17, 2010) and DOE Redelegation Order No. 00–002.04D (Nov. 6, 2007). In reviewing this LNG export application, DOE will consider domestic need for the gas, as well as any other issues determined to be appropriate, including whether the arrangement is consistent with DOE's policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties that may oppose this application should comment in their responses on these issues.

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

You may submit comments in electronic form on the Federal eRulemaking Portal at *http://www.regulations.gov.* Alternatively, written comments can be submitted using the procedures discussed below. If using electronic filing, follow the on-line instructions and submit such comments under FE Docket No. 10–152–LNG. DOE/FE suggests that electronic filers carefully review information provided in their submissions, and include only information that is intended to be publicly disclosed.

In addition to electronic filings using the procedures above, any person may file a protest, motion to intervene or notice of intervention, and written comments, as provided in DOE's regulations at 10 CFR part 590.

Any person wishing to become a party to the proceeding and to have their written comments considered as a basis for any decision on the application must file a motion to intervene or notice of intervention, as applicable. The filing of comments or a protest with respect to the application will not serve to make the commenter or protestant a party to the proceeding, although protests and comments received from persons who are not parties may be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements specified by the regulations in 10 CFR part 590. Except where comments are filed electronically, as described above, comments, protests, motions to intervene, notices of intervention, and requests for additional procedures shall be filed with the Office of Oil and Gas Global Security and Supply at the address listed above.

A decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must

[2] 15 U.S.C. 717b.(a).

[3] *Panhandle Producers and Royalty Owners Association* v. *ERA*, 822 F.2d 1105, 1111 (DC Cir. 1987).

[4] *Dow Chemical Co.*, DOE/FE Order No. 2859, October 5, 2010 at pp. 3 and 4.

[5] *Id.* at pp. 4 and 5.

[6] *Id*, and *Cheniere Marketing, LLC*, DOE/FE/Order No. 2795, June 1, 2010.

[7] 42 U.S.C. 4321 *et seq.*

[8] For example, *Cheniere Marketing, LLC*, DOE/FE Order No. 2795, June 1, 2010 at p. 7.

show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final Opinion and Order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

The application filed by Eni USA is available for inspection and copying in the Office of Oil and Gas Global Security and Supply docket room, 3E–042, at the address listed in **ADDRESSES**. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The application and any filed protests, motions to intervene or notice of interventions, and comments will also be available electronically by going to the following DOE/FE Web address: *http://www.fe.doe.gov/programs/gasregulation/index.html*. In addition, any electronic comments filed will also be available at: *http://www.regulations.gov*.

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

John A. Anderson,

Manager, Natural Gas Regulatory Activities, Office of Oil and Gas Global Security and Supply, Office of Fossil Energy.

[FR Doc. 2011–481 Filed 1–11–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Public Scoping Meetings for the Hawai'i Interisland Renewable Energy Program: 'Wind Programmatic Environmental Impact Statement (DOE/EIS–0459)

AGENCY: Department of Energy (DOE).

ACTION: Notice of public scoping meetings and opportunity to comment.

SUMMARY: DOE will host four public meetings in the Hawaiian Islands to receive comments on the scope of the Hawai'i Interisland Renewable Energy Program: Wind Programmatic Environmental Impact Statement (hereinafter referred to as the Hawai'i Wind EIS or the EIS). The public scoping meetings will be conducted jointly with the State of Hawai'i Department of Business, Economic Development and Tourism (DBEDT), which is a co-lead agency with DOE in the preparation of the EIS. The EIS will assess the foreseeable environmental impacts that may arise from wind energy development under the Hawai'i Interisland Renewable Energy Program (HIREP) and the range of reasonable alternatives.

On December 14, 2010, DOE and DBEDT announced in the **Federal Register** (75 FR 77859) their intention to prepare the EIS and opened a public scoping period which will close on March 1, 2011.

During the scoping period, DOE and DBEDT invite the public to submit written comments by any of the means listed in the **ADDRESSES** section. Oral as well as written comments may also be provided at the public scoping meetings to be held as listed under **SUPPLEMENTARY INFORMATION.**

DATES: DOE and DBEDT invite comments on the proposed scope of the EIS from all interested parties. The public scoping period began on December 14, 2010, and will close on March 1, 2011. Comments on the scope of the EIS should be submitted by March 1, 2011. Comments e-mailed or postmarked after that date will be considered to the extent practicable. DOE and DBEDT also invite members of the public to participate in public scoping meetings. Requests to speak at any of the public scoping meetings should be submitted to Allen Kam as indicated in the **ADDRESSES** section on or before January 28, 2011. Requests to speak also may be made at the scoping meetings; however, requests received by January 28, 2011, will be given priority in the speaking order. For interested parties wishing to speak with a DOE representative, see the **FOR FURTHER INFORMATION CONTACT** section of this announcement.

ADDRESSES: Requests to speak at the public scoping meetings and written comments on the proposed scope of the EIS may be submitted by any of the following means:

- By e-mail to *comments@hirep-wind.com*.
- By submitting electronic comments on the EIS web page at *http://www.hirep-wind.com*.
- By facsimile (fax) to 808–586–2536, Attention Allen G. Kam.
- By mail to Allen G. Kam, Esq., AICP, HIREP EIS Manager, State of Hawai'i, Department of Business, Economic Development and Tourism, Renewable Energy Branch, State Energy Office, P.O. Box 2359, Honolulu, HI 96804.

FOR FURTHER INFORMATION CONTACT: For information on DOE's proposed action, contact Anthony J. Como, DOE NEPA Document Manager, Office of Electricity Delivery and Energy Reliability (OE–20), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; or at 202–586–5935 or *anthony.como@hq.doe.gov*.

For general information about the DOE National Environmental Policy Act (NEPA) process, contact Carol Borgstrom, Director, Office of NEPA Policy and Compliance (GC–54), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; or at 800–472–2756 or *askNEPA@hq.doe.gov*.

For information on the Hawai'i Interisland Renewable Energy Program, contact Mr. Allen G. Kam, Esq., AICP, HIREP EIS Manager, State of Hawai'i, Department of Business, Economic Development and Tourism, Renewable Energy Branch, State Energy Office, P.O. Box 2359, Honolulu, HI 96804; or at 808–587–9023 or *hirep@dbedt.hawaii.gov*.

SUPPLEMENTARY INFORMATION: On December 14, 2010, DOE published a notice in the **Federal Register** (75 FR 77859) announcing its intention to prepare the Hawai'i Wind EIS jointly with the State of Hawai'i and opening a scoping period that will close on March 1, 2011. The EIS will be prepared pursuant to NEPA, as amended (42 U.S.C. 4321–4347), the Council on Environmental Quality NEPA regulations (40 CFR parts 1500–1508), the DOE NEPA implementing procedures (10 CFR part 1021), and the Hawai'i Environmental Policy Act (Hawai'i Revised Statutes (HRS) chapter 343). The EIS will assess the potential environmental impacts from the development of up to 400 megawatts of wind generation facilities on one or more of the Maui County islands of Maui, Lāna'i, and/or Moloka'i, the transmission of wind-generated energy to O'ahu via submarine transmission cables and the required improvements to the existing electric transmission infrastructure on O'ahu. In the December 14, 2010 notice, DOE and DBEDT also indicated that they would hold public scoping meetings and announce the dates and locations of them in a subsequent **Federal Register** notice.

DOE and DBEDT now announce that they will jointly host the following public scoping meetings:

- February 1, 2011—McKinley High School Cafeteria, 1039 South King Street, Honolulu, HI 96814, from 5:30 p.m. to 9 p.m.
- February 2, 2011—Pomaika'i Elementary Cafeteria, 4650 South Kamehameha Avenue, Kahului, HI 96732, from 5:30 p.m. to 9 p.m.

• February 3, 2011—Mitchell Pauole Community Center, 90 Ainoa Street, Kaunakakai, Moloka'i, HI 96748, from 5:30 p.m. to 9 p.m.

• February 5, 2011—Lāna'i High & Elementary School Cafeteria, 555 Fraser Avenue, Lāna'i City, HI 96763, from 9:30 a.m. to 3 p.m.

Each scoping meeting will be conducted in two parts: An informal "workshop" discussion period that will not be recorded, and a formal commenting session that will be transcribed by a court stenographer. Meeting participants may also have their comments entered into the record during the informal portion of the meetings, on request. Those who do not arrange in advance to speak may register at a meeting (preferably at the beginning of the meeting) and may speak after previously scheduled speakers. The presiding officer will establish procedures to ensure that everyone who wishes to speak has an opportunity to do so. Depending on the number of speakers, the presiding officer may limit all speakers to a set amount of time initially and provide additional opportunities to speak as time permits. Speakers may also provide written materials to supplement their presentations, and such additional information may be submitted in writing by the date listed in the **DATES** section. Both oral and written comments will be considered and given equal weight by DOE and DBEDT.

The formal commenting session will begin with an overview of the proposed Wind Phase of the Hawai'i Interisland Renewable Energy Program and a description of the State and Federal environmental review processes. The presiding officer will establish the order of speakers and provide any additional procedures necessary to conduct the formal commenting session. Speakers may be asked questions to help ensure that DOE and DBEDT fully understand all suggestions and comments.

Issued in Washington, DC, on January 7, 2011.

Patricia A. Hoffman,

Assistant Secretary, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2011–479 Filed 1–11–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Record of Decision for the Environmental Impact Statement for the Proposed Abengoa Biorefinery Project Near Hugoton, Stevens County, KS (DOE/EIS–0407)

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

ACTION: Record of Decision.

SUMMARY: The U.S. Department of Energy (DOE or the Department) prepared an environmental impact statement (EIS) (DOE/EIS–0407) to assess the potential environmental impacts associated with the proposed action of providing Federal financial assistance to Abengoa Bioenergy Biomass of Kansas, LLC (Abengoa Bioenergy) to support the design, construction, and startup of a commercial-scale integrated biorefinery to be located near the city of Hugoton in Stevens County, southwestern Kansas (the Project). The integrated biorefinery would use a combination of biomass feedstocks, such as corn stover and wheat straw, to produce ethanol and to generate sufficient electricity to power the facility and supply excess electricity to the regional power grid. The Project site comprises approximately 810 acres of row-cropped agricultural land. The biorefinery facilities would be developed on 385 acres of the Project site, and the remaining 425 acres would remain agricultural and act as a buffer between the biorefinery and the city of Hugoton.

After careful consideration of the potential environmental impacts and other factors such as program goals and objectives, DOE has decided that it will provide Federal funding under Section 932 of the *Energy Policy Act of 2005* (EPAct 2005) of up to $71 million (2009 dollars), subject to annual appropriations, to Abengoa Bioenergy for the Project. A separate decision will be made regarding a potential loan guarantee; and if DOE decides to proceed to consider the loan guarantee, DOE would consider using the Final Abengoa Biorefinery EIS to comply with NEPA review requirements for the loan guarantee. If DOE determines that the Final Biorefinery EIS sufficiently addresses all activities covered by the loan guarantee, DOE could either issue a Record of Decision (ROD) deciding to issue a loan guarantee, or amend this ROD.

ADDRESSES: The Final EIS is available on the DOE *National Environmental Policy Act* (NEPA) Web site at: *http://nepa.energy.gov/* and on the Abengoa Biorefinery Project Web site at: *http://www.biorefineryprojecteis-abengoa.com.* This ROD also is available on these Web sites. Copies of the Final EIS and this ROD may be obtained from Ms. Kristin Kerwin, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, Golden Field Office, 1617 Cole Blvd., Golden, CO 80401; telephone: 720–356–1564; or fax: 720–356–1650.

FOR FURTHER INFORMATION CONTACT: To obtain additional information about this Project, the EIS or the ROD, contact Ms. Kristin Kerwin by the means specified above under **ADDRESSES.** For general information on the DOE NEPA process, contact Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (GC–54), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; telephone: 202–586–4600; fax: 202–586–7031; or leave a toll-free message at: 1–800–472–2756.

SUPPLEMENTARY INFORMATION: DOE prepared this ROD pursuant to the Council on Environmental Quality regulations for implementing the procedural provisions of NEPA [40 *Code of Federal Regulations* (CFR) Parts 1500–1508] and the DOE NEPA regulations (10 CFR Part 1021). This ROD is based in part on DOE's Final EIS for the Proposed Abengoa Biorefinery Project (DOE/EIS–0407, August 2010).

Background

Under EPAct 2005, Congress directed DOE to carry out a program to demonstrate the commercial application of integrated biorefineries for the production of biofuels, in particular ethanol, from lignocellulosic feedstocks. Federal funding for cellulosic ethanol production facilities is intended to further the government's goal of rendering ethanol cost-competitive with gasoline by 2012, and along with increased automobile fuel efficiency, reducing gasoline consumption in the United States by 20 percent within 10 years.

To implement its responsibilities under EPAct 2005, DOE issued a funding opportunity announcement in February 2006 for the design, construction, and startup of commercial-scale integrated biorefineries. In February 2007, the Department selected Abengoa Bioenergy and five other applicants for negotiation of award. Abengoa Bioenergy proposed an innovative approach to biorefinery operations that would involve production of biofuel and energy in the form of steam that could be used to meet energy needs and displace fossil fuels, such as coal and natural gas. The

proposal also included an integrated grain-to-ethanol facility.

In January 2009, Abengoa Bioenergy modified its proposal by omitting the integrated grain-to-ethanol facility and including a steam-driven turbine that would generate sufficient electricity to power the production facility and supply excess electricity to the regional power grid. In addition, Abengoa applied for a loan guarantee from the Department's Loan Guarantee Program pursuant to Title XVII of EPAct 2005, and from the U.S. Department of Agriculture Rural Development Biorefinery Assistance Program pursuant to Section 9003 of the *Food, Conservation, and Energy Act of 2008*. The Department of Agriculture Rural Development was a cooperating agency in the preparation of the EIS.

DOE considered Abengoa Bioenergy's proposed project changes and concluded that the Project remained eligible for Federal funding under Section 932 of EPAct 2005. On August 28, 2009, the Department determined, however, that it would not proceed with Abengoa's request for a DOE loan guarantee.

On December 22, 2009, after publication of the Draft Abengoa Biorefinery Project EIS on September 23, 2009, Abengoa Bioenergy filed a revised loan guarantee application, and in March 2010, the Department determined that the proposed biorefinery was eligible for consideration under Title XVII, Section 1703 of EPAct 2005, and requested that Abengoa submit the Part II portion of its loan guarantee application. Abengoa submitted the Part II application on May 14, 2010.

At this time, DOE is not proposing to issue a loan guarantee for the construction and startup of the biorefinery. DOE is reviewing the Part II submission and, pending the results of the Part II review, will decide whether to initiate the due diligence, underwriting, and negotiation phase of the loan guarantee process. If DOE initiates that process with Abengoa, DOE's proposed action (that is, to issue a loan guarantee) would be subject to NEPA review. If DOE decides to proceed to consider the loan guarantee, DOE would consider using the Final Biorefinery EIS to comply with NEPA review requirements for the loan guarantee. If DOE determines that the Final Biorefinery EIS sufficiently addresses all activities covered by the loan guarantee, DOE could either issue a Record of Decision deciding to issue a loan guarantee, or amend this Record of Decision.

The U.S. Department of Agriculture Rural Development also considered Abengoa's application for a loan guarantee and did not approve it for funding in Fiscal Year 2009. Should Abengoa submit an application for a loan guarantee in the future, Rural Development will use DOE's Final Biorefinery EIS as part of its evaluation of project eligibility and sufficiency.

Purpose and Need for Agency Action

EPAct 2005, Section 932, directs the Secretary of Energy to conduct a program of research, development, demonstration, and commercial application for bioenergy, including integrated biorefineries that can produce biopower, biofuels, and bioproducts. In carrying out a program to demonstrate the commercial application of integrated biorefineries, EPAct 2005 authorizes the Secretary to provide funds to biorefinery demonstration projects to encourage (1) the demonstration of a wide variety of lignocellulosic feedstocks; (2) the commercial application of biomass technologies for a variety of uses, including liquid transportation fuels, high-value bio-based chemicals, substitutes for petroleum-based feedstocks and products, and energy in the form of electricity or useful heat; and (3) the demonstration of the collection and treatment of a variety of biomass feedstocks. Accordingly, DOE needs to implement Section 932 of EPAct 2005 and support advanced biofuel production pursuant to the Renewable Fuel Standard established by the *Energy Independence and Security Act of 2007* (EISA 2007). EISA 2007's Renewable Fuel Standard requires the U.S. Environmental Protection Agency (EPA) to ensure that transportation fuel sold or introduced in the United States contain at least 36 billion gallons per year of biofuels by 2022, and includes specific provisions for advanced biofuels, such as cellulosic ethanol and biomass-based diesel fuels. Thus, DOE's purpose is to demonstrate that commercial-scale integrated biorefineries that use a wide variety of lignocellulosic (second-generation) feedstocks to produce biofuels, bio-based chemicals, and biopower can operate without direct Federal subsidy after construction costs are paid, and that these biorefineries can be easily replicated.

EIS Process

In August 2008, DOE published in the **Federal Register** its "Notice of Intent to Prepare an Environmental Impact Statement and Notice of Wetlands Involvement for the Abengoa Biorefinery Project near Hugoton, KS" (73 FR 50001), starting a 45-day public scoping period during which DOE held a public scoping meeting in Hugoton, Kansas. In April 2009, DOE re-opened public scoping and published in the **Federal Register** its "Amended Notice of Intent to Modify the Scope of the Environmental Impact Statement for the Abengoa Biorefinery Project near Hugoton, KS" (74 FR 19543). The amended notice informed the public about changes in the Project relevant to the scope of the ongoing EIS. The Department conducted a 30-day public scoping period and held a second public scoping meeting in Hugoton, Kansas. During these scoping periods, the Department received oral and written comments of the following three types: Expressions of support for the Project, statements of no negative environmental impacts, and requests for additional information from Federal and state agencies and members of the public.

On September 23, 2009, DOE published in the **Federal Register** its Notice of Availability for the *Draft Environmental Impact Statement for the Abengoa Biorefinery Project Near Hugoton, Stevens County, KS* (DOE/EIS–0407D) (74 FR 48525). DOE's Notice of Availability invited the public to comment on the Draft EIS during a 45-day public comment period, and described how the public could submit oral and written comments on the Draft EIS. DOE's Notice also announced a public hearing, which DOE conducted in Hugoton, Kansas on October 21, 2009. On September 25, 2009, EPA listed the Draft Abengoa Biorefinery Project EIS in its weekly notice of availability (74 FR 48951).

The Department received approximately 40 comments from six commenters during the public comment period. DOE prepared a comment-response chapter for the Final Biorefinery EIS (Chapter 10), which provides each comment and DOE's response. One commenter reiterated comments submitted during public scoping, and another commenter submitted suggestions regarding region-specific studies for corn stover removal and runoff index scores for agricultural lands. One commenter recommended that the proposed transmission line be designed to protect migratory birds and raptors. A few commenters expressed concern about landfill management of refinery waste. A couple of commenters expressed support for the Project. One commenter submitted a number of comments regarding the impacts of biomass harvest on soil sustainability, potential impacts to groundwater, the timeframe for construction of the grain-to-ethanol facility, the use of the latest

biorefinery design for the air quality analysis, the site selection process, and the reliance on irrigated corn crops.

DOE issued the Final EIS and on August 20, 2010, EPA listed the Final Abengoa Biorefinery Project EIS in its weekly notice of availability (75 FR 51458). The Final EIS reflects changes resulting from public comments, and, accordingly, the responses in the comment-response chapter identify sections of the Final EIS to which changes have been made. The Final EIS also reflects changes based on new and updated information. Substantive changes in the Final EIS are indicated by vertical change bars shown in the margins. DOE received one comment on the Final EIS from EPA, Region VII. EPA stated that DOE had adequately addressed the concerns expressed in EPA's comments on the Draft EIS.

Proposed Action and Project Description

DOE's Proposed Action is to provide Federal funding of up to $71 million (2009 dollars), subject to annual appropriations, to Abengoa Bioenergy to support the design, construction, and startup of the biorefinery, whose total anticipated cost is approximately $685 million (2009 dollars).

The biorefinery would be constructed on a 385-acre parcel near Hugoton, Kansas. Abengoa Bioenergy has optioned an additional 425 acres immediately east of the biorefinery parcel, between the biorefinery and the Hugoton city limits, as a buffer area. The optioned parcel would continue to be used as agricultural land, and might be used to test production of biomass feedstocks.

The biomass-to-ethanol and -energy facility proposed by Abengoa Bioenergy would use lignocellulosic biomass (biomass) as feedstock to produce biofuels. Biomass, including corn stover, wheat straw, milo stubble, mixed warm season grasses (such as switchgrass), and other available materials, would be harvested as feedstock and fermented to produce ethanol.

The biorefinery would also produce biopower, or bioenergy, in the form of electricity. The bioenergy generation facilities co-located at the site would use direct-firing (that is, using the biomass as a solid fuel in a boiler) to produce steam. Steam produced in the biomass boilers would be used for facility processes and to produce electricity.

Under the Proposed Action, the biorefinery would process approximately 2,500 dry short tons per day of feedstock, which would be obtained from producers within 50 miles of the Biorefinery Project site. The biorefinery would produce up to 19 million gallons of denatured ethanol per year and 125 megawatts of electricity. Seventy-five megawatts of electricity would be sold commercially.

Construction of the biorefinery would take approximately 18 months and would require infrastructure improvements, such as construction of site roads that would tie to Rural Road P, a 1.5-mile-long electrical transmission line, and an approximately 0.5-mile railroad spur on the Biorefinery Project site that would tie into the Cimarron Valley Railroad. Temporary connections to utilities would include electricity, cable, telephone, and a nonpotable water line. Temporary potable water and sanitary facilities would be provided onsite until construction of permanent, onsite facilities.

Harvested bales of biomass would be transported to a 10-acre onsite storage yard or to one of seven offsite storage sites to be located within 30 miles of the Biorefinery Project site. Each offsite storage location would be about 160 acres and would have no permanent structures. Combined, these sites would store enough biomass to support biorefinery operations for up to 1 year. Bales of corn stover and other biomass ready to be processed at the biorefinery would be transported to a bale barn and sent by conveyor for grinding and cleaning. The ground feedstock would then enter the production process or be stored temporarily in silos onsite. In addition, wood waste would be used as boiler fuel to generate electricity. Up to 1,000 tons per day would be brought from various sources by rail and truck to the biorefinery.

The ethanol production process would involve the following steps: (1) Enzymatic hydrolysis and fermentation, (2) distillation and dehydration, and (3) ethanol denaturization and storage. During hydrolysis and fermentation, the feedstock would be treated with enzymes and genetically modified organisms (enzymatic hydrolysis) to simultaneously break down the cellulose and ferment the recovered sugars. The resulting "beer," which would be 4 to 5 percent ethanol at that point, would then be distilled and dehydrated to remove water and residual solids. Distillation would also destroy genetically modified and other organisms.

The facility design incorporates two 45,200-gallon-capacity shift tanks to hold the anhydrous ethanol produced during each 8-hour shift. The storage tanks would be enclosed in a bermed area to contain spills. Gasoline would be added to denature the ethanol and make it unfit for human consumption prior to temporary storage and loading of the product into tanker railcars for shipment.

Solids would be recovered from the distillation process. Approximately 120,000 dry short tons of solids, referred to as lignin-rich stillage cake, would be produced per year. The stillage cake would be transferred by conveyor to an onsite third-party lignin producer. After extracting the lignin, the lignin producer would return the lignin-poor stillage cake to the biorefinery and Abengoa Bioenergy would use it as fuel for the solid biomass boilers. Until a lignin extraction facility is built, Abengoa would burn the lignin-rich stillage cake as solid fuel in the biomass boilers. As an option, Abengoa could use lignin-rich stillage cake as fuel for the solid biomass boiler during the life of the biorefinery.

The biomass receiving, grinding, and storage operations would be an enclosed system with a high-velocity, positive pressure collection system to transfer airborne particles to a dirt loadout tank. The loadout tank, grinding activities, and associated transfer points would have fabric filter dust collectors (baghouses). Volatile organic matter released during processing would be captured in a vent scrubber.

Approximately 1,900 dry short tons per day of biomass feedstock would be supplied to the boilers. The biomass boilers would also burn much of the waste resulting from ethanol production, including fines collected during milling, stillage cake, and syrup from the distillation process. These processes would produce approximately 127,000 tons of ash annually. This ash would contain potassium and phosphorus and would be marketed to the contracted feedstock producers as a soil amendment. If there is no market for the ash, it would be sent to landfills.

Alternatives

In addition to the Proposed Action, the EIS analyzes an Action Alternative and the No Action Alternative.

Action Alternative

Under the Action Alternative, DOE would provide Federal funding to support the design, construction and startup of a biorefinery that would use a two-stage process to produce fermentable sugars for bioethanol production and that would produce syngas using a gasification system. A syngas boiler as well as the biomass boilers would produce steam. Steam would be used for ethanol production

processes and electricity production. Under the Action Alternative, the biomass boilers and the turbines would be used to generate electricity solely to operate the plant and would be smaller than those for the Proposed Action.

The biorefinery would produce approximately 12 million gallons per year of denatured ethanol, 19,000 short tons per year of lignin-rich stillage cake, and 20 megawatts of electricity for use at the facility.

The milling process for the Proposed Action and Action Alternative is the same. Once milled, the feedstock would be pretreated with dilute acid to remove hemicellulose and pectin (the Proposed Action is a one stage process and does not include two pretreatment stages as does the Action Alternative). It is this pretreatment step and the subsequent processing of the fractionated biomass where the two-stage process differs from the one-stage process described in the Proposed Action. After this pretreatment, two types of hydrolysate or pretreated biomass would be processed in two separate steps. One type contains a hydrolysate primarily consisting of hemicellulose and pectin, which would be further saccharified to fermentable sugars; these simple sugars would then be fermented to ethanol. The second type includes the cellulose-rich, lignin-rich fiber hydrolysate, which would be further processed with enzymes to produce simple sugars that would be simultaneously fermented to ethanol. Each separate step produces beers containing between 4 and 5 percent ethanol and both beers would be conveyed to distillation operations for purification. Volatile organic matter released during both of these processes would be captured in a vent scrubber.

Approximately 71,000 dry short tons per year of soluble and insoluble solids would be recovered from the bottom of the distillation column. The soluble solids would be concentrated to a thin stillage syrup in an evaporator and would be combusted in the biomass boilers. About 130 dry short tons per day of insoluble, lignin-rich stillage cake would be transferred to an onsite processing facility for extraction of lignin. After the lignin was extracted, the lignin producer would return the lignin-poor stillage cake to the biorefinery, and Abengoa Bioenergy would use it as fuel for the solid biomass boiler. Until a lignin extraction facility is built, Abengoa would burn the lignin-rich stillage cake as solid fuel in the biomass boiler. If recovery of lignin is not economically feasible, the lignin-rich stillage cake would be used as fuel in the biomass boiler.Denaturing the produced ethanol and loadout for the Proposed Action and Action Alternative would be the same.

Syngas produced in the gasification plant under the Action Alternative would be used to operate a fire-tube boiler to produce steam. A small biomass solids boiler would also produce steam to power the biorefinery process operations only. Steam would be used to operate a small turbine that would produce 20 megawatts of power.

No-Action Alternative

Under the No-Action Alternative, DOE would not provide Federal funding to Abengoa Bioenergy to support the design, construction, and startup of a biorefinery. Abengoa would not build a biorefinery and the biorefinery parcel would remain agricultural land. The Department recognizes, however, that Abengoa could pursue alternative sources of capital for development of the biorefinery.

Potential Environmental Impacts of the Proposed Action

In making its decision, DOE considered the environmental impacts of the Proposed Action, Action Alternative, and the No-Action Alternative on potentially affected resource areas. These include: land use; air quality; hydrology; biological resources; utilities, energy, and materials; wastes, byproducts, and hazardous materials; transportation; aesthetics; socioeconomics; cultural resources; health and safety; and environmental justice. DOE also considered potential impacts on these resources from accidents and acts of sabotage. No wetlands would be filled and no floodplains would be affected. The EIS also considered cumulative impacts, that is, impacts from the Project combined with those from other past, present, and reasonably foreseeable future actions. The following sections discuss the potential impacts.

Land Use

Operation of the biorefinery would require approximately 880,000 dry short tons of lignocellulosic feedstock per year. Abengoa Bioenergy anticipates that, at the start of operations, the primary feedstock would be corn stover, with secondary feedstocks consisting of grain sorghum stover, wheat straw, and mixed warm season grasses. Approximately 20 percent of the total feedstock demand would consist of corn stover for cellulosic ethanol production, with the remaining 80 percent consisting of any combination of feedstocks for bioenergy production.

DOE conservatively estimates that the total annual demand for crop residue by the biorefinery would equal about 60 percent of the targeted crop residues that could be sustainably removed from the 50-mile region surrounding the Biorefinery Project site. The demand for corn residue for ethanol production would be about 20 percent of the amount that could be sustainably removed from irrigated corn acreage. Thus, production of targeted crop residues exceeds biorefinery demand and Abengoa would have flexibility in feedstock procurement. DOE anticipates the demand for crop residue by the biorefinery would have a negligible impact on changes in land use type, including use of lands in the Conservation Reserve Program, because there would be no incentive to alter land use type for the purpose of meeting demand.

Over time, it is anticipated that mixed warm season grasses (such as switchgrass) would replace corn residue as the primary feedstock for producing ethanol resulting in (1) beneficial environmental impacts where marginal cropland was converted, and (2) minimal environmental changes where land use types such as nonharvested cropland, former Conservation Reserve Program acreage, and pasture were converted. The beneficial environmental impacts of converting marginal cropland to mixed warm season grasses are related to establishment of a crop that is resistant to many pests and plant diseases; uses relatively less water, fertilizer, and pesticides; and establishes deep roots that store carbon in the soil. Increased mixed warm season grasses production would not be expected to result in an adverse impact to land enrolled in the Conservation Reserve Program.

Contracts between Abengoa Bioenergy and producers of biomass would include a requirement that crop residues would be harvested in accordance with U.S. Department of Agriculture guidelines for minimizing wind erosion. DOE concludes that, on a regional basis, removing crop residue following these guidelines would have a negligible adverse impact on soil organic matter content. On a field-by-field basis, crop residue removal would have a negligible to minor adverse impact on soil organic matter content. Any adverse impact to soil organic matter content would be limited to land for which the producer was compensated for residue removal.

Development of the biorefinery would result in the irreversible conversion of 385 acres from agricultural to industrial use. The Proposed Action is consistent with existing land use and zoning at the

Project site. The reduction in irrigated farmland associated with the water rights Abengoa Bioenergy would transfer to industrial use at the biorefinery would be a negligible change in regional irrigated cropland.

Air Quality

Construction of the biorefinery would cause emissions from various activities including use of heavy diesel-operated equipment, disturbance of the soil, grading activities, material transport, and material handling. These activities would be short term or intermittent in nature and would only occur during the 18-month construction phase. Best management practices would be employed to minimize these emissions.

Concentrations of criteria pollutants estimated to be released during operation of the biorefinery would be well below the National Ambient Air Quality Standards. The estimated concentrations from the biorefinery, combined with ambient background concentrations of pollutants in the region, are about 67 percent of the National Ambient Air Quality Standard for 24-hour PM_{10}, 12 percent for nitrogen dioxide, and less than 10 percent of the standard for other pollutants. DOE concludes that air emissions would not harm human health and the environment.

The biorefinery also would be a source of greenhouse gases, with carbon dioxide the most abundant. The boilers would be the main source of the greenhouse gases carbon dioxide, methane, and nitrous oxide. Biomass fermentation and distillation processes also would emit carbon dioxide. The total emissions of carbon dioxide equivalents (used to represent the contribution of all gases) from operation would be 3.61 million tons per year. According to the DOE Energy Information Administration, the total U.S. greenhouse gas emissions in 2008 was 7,775 million tons of carbon dioxide equivalents, with 6,409 million tons of the total from energy-related carbon dioxide. The projected greenhouse gas emissions from the biorefinery would be 0.046 percent of the total U.S. carbon dioxide equivalent value.

Although the biorefinery would be a source of greenhouse gas emissions, operation of the biorefinery would provide a net reduction in greenhouse gas emissions when considering the emissions produced during the lifecycle of ethanol production and use relative to the lifecycle of gasoline production and use. To determine the level of greenhouse gas reduction from the Proposed Action, DOE used the Greenhouse gases, Regulated Emissions, and Energy use in Transportation (GREET) Model, developed by DOE's Argonne National Laboratory. The GREET Model examines "well-to-wheel" fuel lifecycles by considering factors such as producing raw materials for fuels, refining the raw materials into fuels, and using the fuel in vehicles.

The Abengoa Biorefinery Project would reduce greenhouse gas emissions not only by producing a fuel that displaces gasoline, but also by producing power that displaces electricity from other electricity generating sources. The GREET Model combines these reductions and other factors into a single metric to express the net effect on lifecycle greenhouse gas emissions relative to a baseline scenario in which the biorefinery is not built. Because the majority of the electricity the biorefinery would produce would be exported rather than used for biorefinery operations, the greenhouse gases displaced by the biorefinery would be larger than the greenhouse gases emitted by biorefinery operations, thus causing a decrease in greenhouse gas emissions that exceeds 100 percent. As a comparison, if only enough electricity was produced to run the biorefinery (none would be sold to the grid), the percent reduction under the Proposed Action would be 69 percent as compared with the baseline where the biorefinery is not built and passenger vehicles use 100 percent conventional or reformulated gasoline.

Hydrology

Wastewater, petroleum products, and hazardous chemicals would be generated by the biorefinery. Planned releases of wastewater would be limited to the non-contact wastewater that would be used for irrigation of the buffer area. Petroleum products and hazardous chemicals used during construction and operations would be managed within secondary containment on the site, and there are no surface waters in the nearby area that would be affected by accidental releases.

Disturbed and built-up land areas would result in increased runoff; this runoff would be directed to natural low areas within the biorefinery parcel. Changes in infiltration would be minor and likely would be limited to small changes in the exact locations where infiltration would occur. Alterations to surface water drainage would be limited to minor changes within the 385-acre parcel and possibly within the buffer area. Natural low areas where runoff accumulates would not be altered. The Department concludes the potential for adverse impacts to surface waters from the Proposed Action is negligible.

Construction of the biorefinery would require approximately 220 acre-feet of water, and operations would require about 2,900 acre-feet of water per year. DOE estimates that an additional 46 acre-feet of groundwater would be withdrawn per year by the city of Hugoton to meet the domestic needs of biorefinery workers, bringing the total annual estimated demand to support the biorefinery to approximately 2,950 acre-feet per year.

Abengoa Bioenergy has optioned existing irrigation water rights from eight wells to meet the water demand for construction and operation of the biorefinery under the Proposed Action. The maximum permitted withdrawal associated with those water rights is about 7,240 acre-feet per year, and the total volume discharged from those wells in 2008 was about 4,380 acre-feet. Thus, use of those water rights for operation of the biorefinery would result in a reduction of more than 4,290 acre-feet compared with the permitted annual volume, and a reduction of more than 1,430 acre-feet compared with withdrawals during 2008. DOE concludes that operation of the biorefinery would result in a beneficial decrease in groundwater withdrawals from the High Plains aquifer.

Changes in cropping practices as a result of the Proposed Action are not expected to occur. Further, increases in water withdrawals for agricultural purposes in Kansas are limited by State water appropriation regulations, although increases in Oklahoma and Colorado may be allowed. Thus, DOE concludes that changes in water use in the region resulting from changes in land use to meet the demand of the biorefinery for biomass are not expected to occur.

Any spills of hazardous materials would be handled in accordance with a spill prevention, control, and countermeasures plan, which would minimize or eliminate potential impacts to the groundwater quality from construction and operation of the biorefinery.

Biological Resources

There are no Federal- or state-endangered and/or threatened species, candidate species, or state species in need of conservation present or within 1 mile of the Biorefinery Project site. DOE concludes that construction and operation of the biorefinery would have no impacts on threatened or endangered species or their designated critical habitat.

To construct the biorefinery, the biorefinery parcel, which is currently used for dry-land farming, would be converted to industrial use. There would be some minor, short-term adverse impacts to biological resources from the construction and some minor, long-term adverse impacts from the operation of the biorefinery, but these impacts would affect only common species on or within 1 mile of the Biorefinery Project site. The analysis of potential changes in land use resulting from the Proposed Action indicated that conversion of Conservation Reserve Program lands to tilled cropland from the Proposed Action is not expected, and other changes in land use would be minimal. Thus, DOE does not expect the Proposed Action to impact biological resources within the region surrounding the Project site.

Utilities, Energy, and Materials

Biorefinery workers and their families would rely on the city of Hugoton water system, the city of Hugoton sewage system, and the Stevens County landfill. The Hugoton water system also would supply potable water for the biorefinery facilities. Anticipated demands are well below the excess capacity of the City water system. The sewage collection system in Hugoton has sufficient capacity to accommodate use of the system by construction and operations workers and their families. In addition, the Stevens County landfill has enough capacity to handle the increase in solid waste during construction and operations due to the influx of workers and their families living in Hugoton.

The biorefinery would require no electric power from the regional grid during operations. Rather, the biorefinery would supply 75 megawatts of electricity to the grid during normal operations, which equals 5.8 percent of the production capacity in the western-central region of Kansas, but only about 0.2 percent of current summer demand in the Southwest Power Pool. The amount of natural gas and diesel fuel required for normal operation of the biorefinery is approximately 0.1 and 0.05 percent, respectively, of the amounts of these fuels used in Kansas and would not adversely impact their supply and distribution in the region.

The Proposed Action would involve a commitment of building materials. With the possible exception of stainless steel, these materials would be available and their procurement would not decrease availability to other users in regional markets. Components used in stainless steel production (such as chromium and nickel) are in high demand and, at times, affect availability of stainless steel. However, the amount of stainless steel required for construction of the biorefinery is a very small portion of the amount that moves through the U.S. market annually.

Wastes, Byproducts, and Hazardous Materials

The wastes and byproducts the biorefinery would produce include construction wastes, wastewater, solid biomass boiler ash, distiller's residual biomass solids (stillage cake), stillage syrup, wastewater treatment facility sludge, lignin, genetically modified organisms, dirt and fines resulting from biomass processing, municipal solid waste, and hazardous waste.

Solid biomass boiler ash and lignin are byproducts that could be sold to consumers within the 50-mile region of influence. Abengoa Bioenergy would burn stillage cake, dirt and fines from biomass processing, and genetically modified organisms in the solid biomass boilers as part of the Proposed Action. Domestic and process wastewater would be treated in the onsite wastewater treatment facilities, and treated process wastewater would be recycled in the ethanol production process. Wastewater treatment facility sludge would be used in the boiler fly ash pelletization process or burned in the solid biomass boilers. Abengoa would use non-contact wastewater for crop irrigation on the buffer area, and would treat, recycle, and/or dispose of boiler bottom ash, municipal solid waste, hazardous waste, and construction debris at permitted facilities within the region of influence.

The Stevens County landfill would not have adequate capacity to receive the construction wastes generated and maintain its small arid landfill exempt permit status (limited to 20 tons per day); revising that permit would be expensive. The non-recycled construction waste streams would be split among other permitted landfills and transfer stations within 35 miles of the biorefinery without significantly affecting their capacity. Less than 1 ton per day of municipal solid waste would be generated during the expected 30-year operating life of the biorefinery and would be sent to the Stevens County landfill. This waste stream would be about a 3 percent increase to the landfill's current waste stream and would reduce the life of the landfill by less than 1 year.

The onsite wastewater treatment facility would treat all process wastewater generated at the Biorefinery Project site and would not discharge any to the Hugoton wastewater system. Wastewater treated onsite would be reused in the ethanol production process. Wastewater that would not be recycled and reused in the production process or treated onsite (non-contact wastewater) would be produced at a rate of 370 gallons per minute and would be used to irrigate biomass crops on the buffer area. This water would be conveyed to two 11.5-acre storage ponds prior to application to the buffer area. Wastewater treatment facility sludge would be used in the boiler fly ash pelletization process or burned in the solid biomass boilers. Based on an agronomy study, the chemical composition of the wastewater and the anticipated stipulations of a required discharge permit, DOE does not anticipate adverse impacts from the land application of wastewater, including odor or aesthetic impacts. Abengoa Bioenergy would have to modify the facility water balance and wastewater treatment facility design if lignin was extracted from the stillage cake, thereby generating additional wastewater.

Chemicals required for operation of the biorefinery would be received by truck or rail and off-loaded and transferred by an enclosed chemical delivery system to storage tanks, silos, or other chemical storage facilities. Chemicals would have to be obtained from outside the region. The demand for chemicals for the biorefinery would be an insignificant percentage of the production in the United States.

The Project would generate 2,000 pounds per year of hazardous waste (for example, spent solvents, waste ethanol, and caustics). Those wastes would be collected and treated/disposed of by licensed hazardous waste facilities. DOE does not anticipate adverse impacts from the handling and disposal of hazardous wastes generated at the biorefinery because Abengoa Bioenergy's proposed hazardous waste management practices will be implemented.

Genetically modified organisms used in the enzymatic hydrolysis process would be killed by a heat sterilization process and would be contained in the beer column bottoms. The bottoms stream would be dewatered and the residual solids sent to the solid biomass boiler for burning.

The solid biomass boilers would generate up to 16 tons of bottom ash per day. The bottom ash would be sent to the Seward County landfill. Disposal of the bottom ash at this landfill over the life of the biorefinery would reduce the life of permitted landfill space by about 2.2 years. In addition, the solid biomass boilers would generate up to 350 tons of fly ash per day. Abengoa Bioenergy plans to sell the fly ash as a nutrient

replacement co-product to biomass producers in the region. If the ash could not be sold or otherwise used in a beneficial manner, it would require disposal at permitted solid waste disposal facilities. The Stevens County landfill does not have adequate capacity to receive this amount of ash without a permit modification, so this waste stream would be split among permitted landfills and transfer stations within 35 miles of the biorefinery. However, impacts on existing permitted solid waste disposal facilities could be problematic if a significant percentage of the boiler fly ash was not marketable as a soil amendment byproduct. The loss of land used for landfill disposal of solid wastes generated during construction and operation of the biorefinery would be an irreversible and irretrievable loss of resources.

Transportation

There would be approximately 32,000 truck shipments of materials during construction, and about 80,000 to 116,000 truck and 1,300 to 6,600 rail shipments per year during the 30-year operating period of the biorefinery. DOE estimates there would be 35 to 41 traffic fatalities during the 30-year operations period due to these shipments and the commuting of workers, the majority (32 to 38) of which would be due to shipments of biomass, chemicals, denatured ethanol product, and waste. For perspective, over the 30-year operations period, there would be an estimated 13,400 traffic fatalities in Kansas and 820 traffic fatalities in the nine counties surrounding the Project site.

DOE estimates that 1,075 rail carloads of denatured ethanol and waste and 211 to 5,554 rail carloads of biomass and chemicals would be shipped to and from the biorefinery per year of operation, which is equivalent to about 49 to 241 additional trains per year. This would result in an increase in the approximately 600 trains per year that travel on the Cimarron Valley Railroad, but is less than the capacity of 40 to 60 trains per day on that line. Thus, the additional rail traffic for the Proposed Action would not adversely affect the operations of the Cimarron Valley Railroad.

Increased truck traffic would result in increased pavement deterioration. For biomass, chemical, and waste shipments associated with the Proposed Action, DOE estimated the annual cost of this pavement damage to range from $580,000 to $840,000.

Aesthetics

DOE considered the potential impacts of the Abengoa Biorefinery Project on views in the area surrounding the Biorefinery Project site and evaluated how noise and odor from the biorefinery could affect residents in the area.

Visual Resources—The tallest structure at the biorefinery considered under the Proposed Action would be approximately 115 feet, but many of the other structures would be 40 feet tall or less. The biorefinery would be visually similar to the grain storage silos and elevators, chemical tanks, and other structures located adjacent to the Biorefinery Project site and would be visible from surrounding vantage points, such as the city of Hugoton and the Forewinds Golf Course. The Proposed Action would require a new 1.5-mile-long transmission line that would be visible from Road P and Road 11 near the Biorefinery Project site, but would result in minimal visual impacts to viewers from a distance.

The biorefinery would operate 24 hours a day, 350 days a year, and thus would be a source of night lighting.

Noise—Workers would be exposed to noise during construction from construction equipment and trucks traveling to and from the biorefinery construction site. Workers would also be exposed to noise from equipment and biorefinery processes during operations. Best management practices would be employed to limit noise, and a hearing conservation program would be implemented; therefore, permissible noise exposure levels are not expected to be exceeded.

The nearest residence to the Biorefinery Project site, approximately 0.6 mile away, may experience some annoyance from construction noise. The noise level at that distance would be approximately 56 decibels which is approximately the same noise level as a normal conversation.

In addition to being temporary, EPA states that this noise level should not interfere with daily activities such as conversation, working, or recreation. As such, the impact would be small. At 0.6 mile, noise from wood hog operations could be distinguishable from other background sources of noise. Noise from biorefinery operations would attenuate to below background levels beyond 0.6 mile. Therefore, except for the residence at the northwest property boundary, DOE does not anticipate impacts to members of the public from construction or operation of the biorefinery due to noise.

During construction, there would be about 70 truck shipments to the biorefinery site per day, or about one truck arriving every 12 minutes (assuming all traffic occurs from 7 a.m. to 9 p.m.). During operations, 202 trucks per day are expected (one truck every 4 minutes). The routes taken by those trucks through and around Hugoton would vary, but it is anticipated that at least 50 percent of the traffic (one truck every 8 minutes during operations) would use the truck bypass and affect two residences along Road Q. Along a route that passes the Stevens County Hospital, several schools, and places of worship, trucks are anticipated to pass at a rate of one every 21 minutes during operations. Noise from these passing trucks would frequently interfere with outdoor conversations and cause annoyance indoors. Rail traffic would increase by about 255 trains per year. Most of the rail shipments would carry wood waste and are expected to occur on weekdays during normal working daylight hours.

Odor—Odors may result from emissions of volatile organic compounds, including ethanol, and hazardous air pollutants, and from nitrogen dioxide and sulfur dioxide. Engineered controls implemented to minimize these emissions would reduce odors from the biorefinery. Air dispersion modeling indicates that no odorous compounds would be detected at the biorefinery parcel fence line or offsite locations where the public would commonly be located. Therefore, DOE anticipates no impacts to the public from the release of odorous compounds.

Socioeconomics

DOE evaluated the potential impacts of construction and operation of the biorefinery on socioeconomic variables, including population and housing, employment and income, taxes, and public services, in Stevens County and the three surrounding counties; that is, Morton and Seward counties in Kansas and Texas County in Oklahoma.

The Proposed Action would require 256 workers at the peak of construction. About 190 of those positions likely would be filled by people who would migrate into the four-county region, which would result in a temporary increase in the population in the region of less than 1 percent and would have little impact on the availability or cost of housing or on public services. In addition to the jobs directly associated with the construction of the biorefinery, 88 indirect jobs are expected to be created during the peak period of construction. DOE estimates that during construction, there would be about 110 additional students enrolled in local school districts. This represents a 1.0

percent increase in enrollment in the region. During the 12-month period of the most-intense construction activity, the region could experience an approximately $17-million infusion of earnings, which equals about 1 percent of the 2006 per capita income in the region.

The anticipated life of the biorefinery is 30 years, during which it would employ 43 people. This would result in a regional increase in the local population of less than 0.1 percent, and would have little or no impact on housing, public services, or educational services. During operations, the region would experience an annual $4.4 million infusion in earnings. In addition, 23 indirect jobs are expected to be created during the operations phase.

Cultural Resources

No properties listed on the National Register of Historic Places are within or on properties adjoining the Biorefinery Project site. Based on DOE review of published information, coordination with the State Historic Preservation Officer, and the results of a Phase I/II investigation of a 160-acre portion (areas investigated were coordinated with the State Historic Preservation Officer) of the Project site, construction and operation of the biorefinery would not result in adverse impacts to State-preserved or National Historic Register sites, sites of prehistoric or early historic occupation, or historic resources of local significance. When selected, offsite biomass storage locations will be evaluated for cultural resources in coordination with the Kansas State Historical Preservation Office to ensure no adverse impacts.

Health and Safety

DOE estimated health and safety impacts to workers from industrial hazards using incidence rates for 2007 for both nonfatal occupational injuries and occupational fatalities from the U.S. Department of Labor, Bureau of Labor Statistics. Members of the public would not be located within the Biorefinery Project site and would not be affected by industrial hazards at the biorefinery.

The potential for adverse impacts to health and safety from the Proposed Action would be very minor. During construction, the industrial health and safety impacts to workers are estimated to be 14 total recordable cases (that is, work-related deaths, illnesses, or injuries that result in the loss of consciousness, days away from work restricted work activity or job transfer, or required medical treatment beyond first aid), 7 days away from work, and 0.026 fatality. During operations, the total annual industrial health and safety impacts to workers from all operations at the biorefinery (such as, ethanol manufacturing, milling and grinding operations, and electric power generation) are estimated to be 2.7 total recordable cases, 0.94 day away from work, and 0.0014 fatality. Based on these results, DOE concludes that a fatality would be unlikely. No adverse health impacts to members of the public from air emissions under normal operations are anticipated.

Facility Accidents and Sabotage

Based on the operational history of existing ethanol plants, DOE concludes that the hazards of ethanol production to members of the public are minor, and that accidents during biorefinery operations are not likely to result in permanent health effects to offsite members of the public. In some accident scenarios, such as the failure of an ethanol or gasoline storage tank, workers could be injured or killed depending on the location of the worker at the time of the event.

DOE considered the most hazardous intentional destructive act to be the deliberate destruction of a toxic chemical storage tank. The consequences of such an act would be similar to the accidental failure of a toxic chemical tank and would be limited to injury and, in unlikely circumstances, death to nearby workers.

Environmental Justice

No impacts to communities with high percentages of minority or low-income populations were identified that would exceed those identified for the general population. In addition, during the scoping process, DOE identified no unique exposure pathways, sensitivities, or cultural practices that would result in different impacts on minority or low-income populations. Disproportionately high and adverse impacts would be unlikely as a result of the Proposed Action.

Potential Impacts of the Action Alternative

Under the Action Alternative, the environmental impacts would be similar to those of the Proposed Action. For most resource and subject areas, there are no or minor differences between those alternatives. Differences exist between the alternatives for the following resource and subject areas.

Air Quality—The Proposed Action would result in a greater reduction in greenhouse gas emissions (340 percent) than the Action Alternative (39 percent) by producing more fuel with biomass-derived ethanol and producing more electricity from biomass.

Utilities—The Proposed Action would produce and sell electricity in excess of that required to operate the biorefinery equal to about 5 percent of the production capacity in west-central Kansas. The Action Alternative would produce less electricity and would require electrical power from the regional grid to operate the biorefinery equal to about 1 percent of the combined production capacity of two suppliers in the region.

Transportation—The Proposed Action would require substantially more truck shipments than the Action Alternative during operations; thus, the number of traffic accidents and amount of road damage would be proportionally greater under the Proposed Action.

Noise—For operations, because there would be more truck shipments for the Proposed Action, local residents would experience noise from truck shipments more frequently under the Proposed Action than under the Action Alternative.

Socioeconomics—Approximately 10 percent more workers would be employed at the biorefinery under the Proposed Action, and more earnings would be infused in the local economy.

Under the Action Alternative, the biorefinery would produce 33 percent less ethanol [12 million gallons (45 million liters)] and 80 percent less biopower (20 megawatts) than under the Proposed Action. In addition, less salable byproducts, such as lignin and lignin-rich stillage cake, would be produced under the Action Alternative.

Potential Impacts of the No-Action Alternative

Under the No-Action Alternative, none of the adverse impacts identified above for the two action alternatives (for example, emissions of air pollutants, use of land for disposal of solid wastes, increase in truck traffic, and associated increase in accidents and noise) or beneficial impacts (for example, increased employment, decrease in groundwater use, and increase in the electrical production capacity for the region) would occur. Further, the benefits that would be gained from the development, demonstration, and commercial operation of an integrated biorefinery that uses lignocellulosic feedstocks would not be realized. In addition, no benefits would be realized from the development of a renewable energy system that would reduce air pollutants and sequester emissions of greenhouse gases. For example, the reductions in greenhouse gas emissions estimated to occur if the Proposed

Action were implemented would not be realized with the continued use of gasoline instead of biofuel and no generation of biopower.

Environmentally Preferred Alternative

The Proposed Action and Action Alternative would result in both beneficial and adverse potential environmental impacts (summarized above and in Table 2–2 of the EIS). Potential beneficial impacts include those associated with reductions in greenhouse gas emissions and a decrease in water withdrawals; adverse impacts include those associated with a substantial increase in transportation activity and minor impacts from air emissions. On balance, DOE regards the No-Action Alternative, which would result in no change in existing environmental conditions, as the environmentally preferred alternative.

Decision

DOE has decided to implement the Proposed Action to provide Federal funding of up to $71 million (2009 dollars), subject to annual appropriations, to Abengoa Bioenergy Biomass of Kansas, LLC (Abengoa Bioenergy) to support the design, construction, and startup of the Abengoa Biorefinery Project. DOE has also decided to adopt the mitigation measures discussed in the Final Abengoa Biorefinery EIS and summarized below under "Mitigation".

Basis of Decision

DOE's decision is based on the importance of achieving the objectives of the EPAct 2005 and careful review of the potential environmental impacts presented in the Final Biorefinery EIS. This Project will support advanced biofuel production pursuant to the Renewable Fuel Standard established by EISA 2007, which requires EPA to ensure that transportation fuel sold or introduced into commerce in the United States contain at least 36 billion gallons per year of biofuels by 2022. It provides an opportunity to demonstrate that commercial-scale integrated biorefineries that use a wide variety of lignocellulosic (second-generation) feedstocks to produce biofuels and biopower can operate without direct Federal subsidy after construction costs are paid, and that these biorefineries can be easily replicated.

The Project would reduce greenhouse gas emissions not only by producing a fuel that displaces gasoline, but also by producing power that displaces electricity from other electricity generating sources. In addition, this Project would have economic benefits in the region. The Project would require 256 workers at the peak of construction and during the 12-month period of the most-intense construction activity, the region could experience an approximately $17-million infusion of earnings. Over the anticipated life of the biorefinery of 30 years, it would employ 43 people and the region would experience an annual $4.4 million infusion in earnings.

To meet the mandates of the EPAct 2005 and other governing policies, it is in the best interest of DOE to select and fund the most technologically and economically viable alternative. Production of more ethanol and production of biopower would make the Proposed Action a more economically viable alternative than the Action Alternative. The Proposed Action, therefore, better meets the direction of Section 932(d)(2) of EPAct 2005, which directs the Secretary of Energy to select only proposals that "demonstrate that the project will be able to operate profitably without direct Federal subsidy after initial construction costs are paid." In addition, the Proposed Action more fully supports the intent of the Section 932(d)(1) of EPAct 2005 to encourage the commercial application of biomass technologies for a variety of uses, including high-value bio-based chemicals and energy in the form of electricity and useful heat. For these reasons, DOE determined the Proposed Action more fully meets its purpose and need, and has decided to implement the Proposed Action.

This decision incorporates all practicable means to avoid or minimize environmental impacts. DOE plans to review annual monitoring reports to assess the environmental impacts predicted in the EIS and the implementation of appropriate avoidance and mitigation measures.

Mitigation

DOE's decision incorporates best management practices and additional measures to avoid or minimize adverse environmental impacts during the design, construction, and operation of the Project. DOE will require Abengoa Biorefinery to implement the best management practices outlined in Chapter 6, Section 6.1, of the Final Biorefinery EIS, for the following resource areas: land use; air quality; geology and soils; surface water; groundwater; biological resources; utilities, energy, and materials; wastes and hazardous materials; visual resources; noise; odor; cultural resources; and health and safety.

DOE regards mitigation measures as activities or actions that would be above and beyond (in addition to) best management practices. DOE requires that the participants comply with all applicable Federal, state, and local environmental laws, orders, and regulations. Mitigation measures beyond those specified in permit conditions will be addressed in a mitigation action plan (MAP) that DOE will prepare pursuant to 10 CFR 1021.331. The MAP will explain how the mitigation measures will be planned, implemented, and monitored and is an adaptive management tool. Mitigation conditions in it will be removed if equivalent conditions are otherwise established by permit, license, or law, as compliance with permit, license or regulatory requirements are not considered mitigation activities subject to DOE control and are therefore not included in MAPs.

DOE will ensure that commitments in the ROD are incorporated into DOE's Cooperative Agreement with Abengoa Bioenergy. The MAP and annual monitoring reports will be available on the DOE NEPA Web site (*http://www.nepa.energy.gov*) and the DOE Golden Field Office Web site (*http://www.eere.energy.gov/golden/Reading_Room.aspx*). DOE will make copies of the MAP available for inspection in appropriate locations (*e.g.*, local library or DOE reading rooms) for a reasonable time. The Department also will provide copies of the MAP and annual reports upon request.

In the Final EIS, DOE stated that mitigation measures for the following resource areas were being considered: air quality, biological resources, visual resources, odor, socioeconomics, wastes and hazardous materials, and transportation. Upon consideration of the findings presented in the Final EIS, DOE has determined that no mitigation is required for air quality, odor, or socioeconomic impacts. The required implementation of air quality best management practices presented in Section 6.1 will adequately minimize impacts and therefore no additional mitigation is required. While the EIS concludes that odor may result from emissions of volatile organic compounds, it also concludes, based on air dispersion modeling, that there are no anticipated impacts to the public from the release of odorous compounds and therefore no mitigation is required. The EIS concludes that the impacts to community services would be temporary and not likely to place an undue demand on community services, and therefore no mitigation is required.

Biological Resources Mitigation. While the EIS concludes that DOE does not expect the Proposed Action to

impact biological resources (including threatened and endangered species) within the region or the Project site, DOE acknowledges that the new transmission line should be designed to minimize impacts to raptors and migratory birds. At this time it is uncertain whether Abengoa or Pioneer Electric Cooperative, Inc. (Pioneer Electric) will be responsible for the design and construction of the new transmission line, or if an existing transmission line will be upgraded by Pioneer Electric to serve the biorefinery. If Abengoa is responsible for the design and construction of the transmission line, DOE will require that the line be designed and constructed to minimize the risk of electrocution to raptors and migratory birds. If Pioneer Electric is responsible for the design and construction of the new transmission line or the upgrade of the existing line, DOE will have no authority to impose mitigation measures. However, a transmission line constructed or upgraded by Pioneer Electric would be subject to additional NEPA review by the U.S. Department of Agriculture Rural Utilities Service (RUS). Further, Pioneer Electric would follow RUS standards for design and construction of transmission lines, which include consideration of raptors and migratory birds.

Visual Resources Mitigation. The buffer area will only be used for agricultural activities, thereby maintaining the current visual status of this area. To minimize visual impacts from nighttime light, the biorefinery will have the minimum amount of downward-facing or directional lighting necessary for safe operation.

Wastes and Hazardous Materials Mitigation. Abengoa will develop and implement a waste management plan for construction and operation of the biorefinery. Abengoa will also develop and implement a contingency plan for alternative beneficial uses of the solid biomass boiler fly ash in the event that the waste management plan is not effective.

Transportation Mitigation. To the extent practicable, Abengoa will stagger workforce schedules to minimize traffic delays and congestion. Abengoa will develop safety-based criteria to be used, in part, to select carriers, including elements of the Federal Motor Carrier Safety Administration regulations, as well as provisions for drivers to be paid hourly and receive bonuses for accident-free driving, mandatory safety training, and avoidance of teen-age drivers and drivers having less than 5-years experience. Abengoa will require carriers and drivers to meet the Federal Motor Carrier Safety Administration regulations. In addition, to the extent practicable, Abengoa will maximize the use of rail shipments to and from the Project site and will ensure the onsite rail system does not block railroad crossings near the site.

Issued in Washington, DC, on the 15th day of December 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy, Department of Energy.

[FR Doc. 2011–480 Filed 1–11–11; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–SFUND–2010–0437; FRL–9251–3]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Notification of Episodic Releases of Oil and Hazardous Substances (Renewal); EPA ICR No. 1049.12, OMB Control No. 2050–0046

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before February 11, 2011.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–SFUND–2010–0437, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *superfund.docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Superfund Docket, Mailcode 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attention:* Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Lynn Beasley, Office of Emergency Management, Mailcode 5104A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* 202–564–1965; *fax number:* 202–564–8444; *e-mail address: beasley.lynn@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 28, 2010 (75 FR 36653), EPA sought comments on this ICR pursuant to 5 CFR.1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–SFUND–2010–0437, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the Superfund Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Superfund Docket is 202–566–0276.

Use EPA's electronic docket and comment system at *www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Notification of Episodic Releases of Oil and Hazardous Substances (Renewal).

ICR numbers: EPA ICR No. 1049.12, OMB Control No. 2050–0046.

ICR Status: This ICR is scheduled to expire on January 31, 2011. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's

regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Federal law (CERCLA section 103(a) and CWA section 311) requires the person in charge of a facility or vessel to immediately notify the Federal government of a release of a reportable quantity or more of a hazardous substance into the environment and of an oil spill into U.S. navigable waters if the spill causes a sheen or violates applicable water quality standards. The reporting of hazardous substance releases and oil spills allows the Federal government to determine whether a response action is required to protect public health and the environment. Further, release information helps the Federal government evaluate the need for additional regulations and informs emergency response planners.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 4 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Any facility that uses and could potentially release oil into the environment.

Estimated Number of Respondents: 24,041.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 98,568.

Estimated Total Annual Cost: $3,121,796, includes $0 annualized capital or O&M costs.

Changes in the Estimates: There is a decrease of 7,462 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. The decrease is due to a projected continued decline in the number of reportable releases.

Dated: January 6, 2011.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2011–494 Filed 1–11–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2007–0468; FRL–9251–4]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Environmental Impact Assessment of Nongovernmental Activities in Antarctica; EPA ICR No. 1808.06, OMB Control No. 2020–0007

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA)(44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before February 11, 2011.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OECA–2007–0468, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *docket.oeca.epa.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, Enforcement and Compliance Docket, Environmental Protection Agency, Mailcode: 2822T, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Aimee Hessert, NEPA Compliance Division, Office of Federal Activities, 2252A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* 202–564–0993; *fax number:* 202–564–0072; *e-mail address: hessert.aimee@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On July 30, 2010, (75 FR 44944), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received 1 comment during the comment period, which is addressed in the ICR. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OECA–2007–0468, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Enforcement and Compliance Docket is 202–566–1511.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Environmental Impact Assessment of Nongovernmental Activities in Antarctica.

ICR numbers: EPA ICR No. [1808.06], OMB Control No. 2020–0007.

ICR Status: This ICR is scheduled to expire on January 31, 2011. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when

approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The Environmental Protection Agency's (EPA's) regulations at 40 CFR part 8, Environmental Impact Assessment of Nongovernmental Activities in Antarctica (Rule), were promulgated pursuant to the Antarctic Science, Tourism, and Conservation Act of 1996 (Act), 16 U.S.C. 2401 *et seq.*, as amended, 16 U.S.C. 2403a, which implements the Protocol on Environmental Protection (Protocol) to the Antarctic Treaty of 1959 (Treaty). The Rule provides for assessment of the environmental impacts of nongovernmental activities in Antarctica, including tourism, for which the United States is required to give advance notice under Paragraph 5 of Article VII of the Treaty, and for coordination of the review of information regarding environmental impact assessments received from other Parties under the Protocol. The requirements of the Rule apply to operators of nongovernmental expeditions organized or proceeding from the territory of the United States to Antarctica and include commercial and non-commercial expeditions. Expeditions may include ship-based tours; yacht, skiing or mountaineering expeditions; privately funded research expeditions; and other nongovernmental activities. The Rule does not apply to individual U.S. citizens or groups of citizens planning travel to Antarctica on an expedition for which they are not acting as an operator. The provisions of the Rule are intended to ensure that potential environmental effects of nongovernmental activities undertaken in Antarctica are appropriately identified and considered by the operator during the planning process and that to the extent practicable appropriate environmental safeguards which would mitigate or prevent adverse impacts on the Antarctic environment are identified by the operator.

Environmental Documentation: Persons subject to the Rule must prepare environmental documentation to support the operator's determination regarding the level of environmental impact of the proposed expedition. Environmental documentation includes a Preliminary Environmental Review Memorandum (PERM), an Initial Environmental Evaluation (IEE), or a Comprehensive Environmental Evaluation (CEE). The environmental document is submitted to the Office of Federal Activities (OFA). If the operator determines that an expedition may have: (1) Less than a minor or transitory impact, a PERM needs to be submitted no later than 180 days before the proposed departure to Antarctica; (2) no more than minor or transitory impacts, an IEE needs to be submitted no later than 90 days before the proposed departure; or (3) more than minor or transitory impacts, a CEE needs to be submitted. Operators who anticipate such activities are encouraged to consult with EPA as soon as possible regarding the date for submittal of the CEE. The Protocol and the Rule also require an operator to employ procedures to assess and provide a regular and verifiable record of the actual impacts of an activity which proceeds on the basis of an IEE or CEE. Moreover, an operator needs to monitor key environmental indicators for an activity proceeding on the basis of a CEE. An operator may also need to carry out monitoring in order to assess and verify the impact of an activity for which an IEE would be prepared. For activities that require an IEE, an operator should be able to use procedures currently being voluntarily utilized by operators to provide the required information. In cases of emergency related to the safety of human life or of ships, aircraft, equipment and facilities of high value, or the protection of the environment which would require an activity to be undertaken without completion of the documentation procedures set out in the Rule, the operator would need to notify the Department of State within 15 days of any activities which would have otherwise required preparation of a CEE, and provide a full explanation of the activities carried out within 45 days of those activities. Environmental documents (*e.g.*, PERM, IEE, CEE) are submitted to OFA. Environmental documents are reviewed by OFA, in consultation with the National Science Foundation and other interested Federal agencies, and also made available to other Parties and the public as required under the Protocol or otherwise requested.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1,708 hours annually, or 78 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Nongovernmental operators with activities in Antarctica.

Estimated Number of Respondents: 22.

Frequency of Response: Annual.

Estimated Total Annual Burden Hours: 1,708 hours.

Estimated Total Annual Cost: $136,675, includes $4,256 annualized capital or O&M costs.

Changes in the Estimates: There is an increase of 45 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is the result of a change in the type of environmental documentation EPA anticipates the respondents will submit.

Dated: January 6, 2011.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2011–498 Filed 1–11–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2011–0970; FRL–9252–3]

Human Studies Review Board; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA or Agency) Office of the Science Advisor (OSA) announces a public meeting of the Human Studies Review Board (HSRB) to advise the Agency on EPA's scientific and ethical reviews of research with human subjects.

DATES: This public meeting will be held on January 26, 2011, from approximately 8:30 a.m. to approximately 5 p.m. Eastern Time. The meeting will be held at the Environmental Protection Agency, Conference Center—Lobby Level, One Potomac Yard (South Bldg.), 2777 S.

Crystal Drive, Arlington, VA 22202. Seating at the meeting will be on a first-come basis. To request accommodation of a disability, please contact the persons listed under **FOR FURTHER INFORMATION CONTACT** at least 10 business days prior to the meeting to allow EPA adequate time to process your request.

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral comments for the HSRB to consider during the advisory process. Additional information concerning submission of relevant written or oral comments is provided in section I. "Public Meeting," under subsection D. "How may I participate in this meeting?" of this notice.

ADDRESSES: Submit your written comments, identified by Docket ID No. EPA–HQ–ORD–2011–0970, by one of the following methods:

Internet: http://www.regulations.gov: Follow the on-line instructions for submitting comments.

E-mail: ord.docket@epa.gov.

Mail: Environmental Protection Agency, EPA Docket Center (EPA/DC), ORD Docket, Mailcode: 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

Hand Delivery: The EPA/DC Public Reading Room is located in the EPA Headquarters Library, Room Number 3334 in the EPA West Building, located at 1301 Constitution Avenue, NW., Washington, DC 20460. The hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Time, Monday through Friday, excluding Federal holidays. Please call (202) 566–1744 or e-mail the ORD Docket at *ord.docket@epa.gov* for instructions. Updates to Public Reading Room access are available on the Web site (*http://www.epa.gov/epahome/dockets.htm*).

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2011–0970. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wishes to receive further information should contact Jim Downing at *telephone number:* (202) 564–2468; *fax:* (202) 564–2070; *e-mail address: downing.jim@epa.gov,* or Lu-Ann Kleibacker at *telephone number:* (202) 564–7189; *fax:* 202–564–2070; *e-mail address: kleibacker.lu-ann@epa.gov;* mailing address: Environmental Protection Agency, Office of the Science Advisor (8105R), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. General information concerning the EPA HSRB can be found on the EPA Web site at *http://www.epa.gov/osa/hsrb/.*

SUPPLEMENTARY INFORMATION:

I. Public Meeting

A. Does this action apply to me?

This action is directed to the public in general. This action may, however, be of particular interest to persons who conduct or assess human studies, especially studies on substances regulated by EPA, or to 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). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult Jim Downing or Lu-Ann Kleibacker listed under **FOR FURTHER INFORMATION CONTACT.**

B. How can I access electronic copies of this document and other related information?

In addition to using regulations.gov, you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

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 ORD Docket, EPA/DC, Public Reading Room. The EPA/DC Public Reading Room is located in the EPA Headquarters Library, Room Number 3334 in the EPA West Building, located at 1301 Constitution Avenue NW., Washington, DC 20460. The hours of operation are 8:30 am to 4:30 p.m. EST, Monday through Friday, excluding Federal holidays. Please call (202) 566–1744 or e-mail the ORD Docket at *ord.docket@epa.gov* for instructions. Updates to Public Reading Room access are available on the Web site (*http://www.epa.gov/epahome/dockets.htm*). EPA's position paper(s), charge/questions to the HSRB, and the meeting agenda will be available by mid January 2011. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the regulations.gov Web site and the EPA HSRB Web site at *http://www.epa.gov/osa/hsrb/.* For questions on document availability, or if you do not have access to the Internet, consult either Jim Downing or Lu-Ann Kleibacker listed under **FOR FURTHER INFORMATION CONTACT.**

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

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data that you used to support your views.

4. Provide specific examples to illustrate your concerns and suggest alternatives.

5. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject

line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

D. How may I participate in this meeting?

You may participate in this meeting by following the instructions in this section. To ensure proper receipt by EPA, it is imperative that you identify docket ID number EPA–HQ–ORD–2011–0970 in the subject line on the first page of your request.

1. Oral comments. Requests to present oral comments will be accepted up to Wednesday, January 19, 2011. To the extent that time permits, interested persons who have not pre-registered may be permitted by the Chair of the HSRB to present oral comments at the meeting. Each individual or group wishing to make brief oral comments to the HSRB is strongly advised to submit their request (preferably via e-mail) to Jim Downing or Lu-Ann Kleibacker, under **FOR FURTHER INFORMATION CONTACT**, no later than noon, Eastern Time, Wednesday, January 19, 2011, in order to be included on the meeting agenda and to provide sufficient time for the HSRB Chair and HSRB Designated Federal Official (DFO) to review the meeting agenda to provide an appropriate public comment period. The request should identify the name of the individual making the presentation and the organization (if any) the individual will represent. Oral comments before the HSRB are generally limited to five minutes per individual or organization. Please note that this includes all individuals appearing either as part of, or on behalf of, an organization. While it is our intent to hear a full range of oral comments on the science and ethics issues under discussion, it is not our intent to permit organizations to expand the time limitations by having numerous individuals sign up separately to speak on their behalf. If additional time is available, further public comments may be possible.

2. Written comments. Submit your written comments prior to the meeting. For the HSRB to have the best opportunity to review and consider your comments as it deliberates on its report, you should submit your comments at least five business days prior to the beginning of this meeting. If you submit comments after this date, those comments will be provided to the Board members, but you should recognize that the Board members may not have adequate time to consider those comments prior to making a decision. Thus, if you plan to submit written comments, the Agency strongly encourages you to submit such comments no later than noon, Eastern Time, January 19, 2011. You should submit your comments using the instructions in section I., under subsection C., "What should I consider as I prepare my comments for EPA?" In addition, the Agency also requests that persons submitting comments directly to the docket also provide a copy of their comments to Jim Downing or Lu-Ann Kleibacker listed under **FOR FURTHER INFORMATION CONTACT**. There is no limit on the length of written comments for consideration by the HSRB.

E. Background

The HSRB is a Federal advisory committee operating in accordance with the Federal Advisory Committee Act (FACA) 5 U.S.C. App.2 section 9. The HSRB provides advice, information, and recommendations to EPA on issues related to scientific and ethical aspects of human subjects research. The major objectives of the HSRB are to provide advice and recommendations on: (1) Research proposals and protocols; (2) reports of completed research with human subjects; and (3) how to strengthen EPA's programs for protection of human subjects of research. The HSRB reports to the EPA Administrator through EPA's Science Advisor.

1. Topics for discussion. At its meeting on January 26, 2011, EPA's Human Studies Review Board will consider scientific and ethical issues surrounding these topics:

—A scenario design and associated protocol from the Agricultural Handler Exposure Task Force (AHETF) describing proposed research to monitor exposure of workers who mix and load pesticides formulated as wettable powders. EPA requests the advice of the HSRB concerning whether, if it is revised as suggested in EPA's review and if it is performed as described, this research is likely to generate scientifically reliable data, useful for assessing the exposure of those who mix and load pesticides formulated as wettable powders, and to meet the applicable requirements of 40 CFR part 26, subparts K and L.

—The report of a completed scenario monograph and study reports of five field studies from the Agricultural Handler Exposure Task Force (AHETF) measuring the dermal and inhalation exposure of workers applying liquid spray pesticides to tree or trellis crops using closed cab airblast equipment. The studies were conducted in five states in the U.S. where closed cab airblast equipment is commonly used in production agriculture. EPA seeks the advice of the HSRB on the scientific soundness of this completed research and on its appropriateness for use in estimating the exposure of workers who apply liquid spray pesticides using closed cab airblast equipment, and on whether available information supports a determination that the study was conducted in substantial compliance with subparts K and L of 40 CFR part 26.

2. Meeting minutes and reports. Minutes of the meeting, summarizing the matters discussed and recommendations, if any, made by the advisory committee regarding such matters, will be released within 90 calendar days of the meeting. Such minutes will be available at *http://www.epa.gov/osa/hsrb/* and *http://www.regulations.gov*. In addition, information concerning a Board meeting report, if applicable, can be found at *http://www.epa.gov/osa/hsrb/* or from the person listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: January 7, 2011.

Fred S. Hauchman,

Acting EPA Science Advisor.

[FR Doc. 2011–625 Filed 1–11–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9246–7]

Next Generation Risk Assessment Public Dialogue Conference

Correction

In notice document 2010–32977 appearing on page 82387 in the issue of Thursday, December 30, 2010, make the following correction:

¶In the second column, below the signature date, the signatory's name, "Darrell A. Winn" should read "Darrell A. Winner".

[FR Doc. C1–2010–32977 Filed 1–11–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0975; FRL–8859–7]

Methomyl: Cancellation Order for Amendments to Terminate Use of Methomyl on Grapes; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; correction.

SUMMARY: EPA issued a notice in the **Federal Register** of Wednesday, December 8, 2010, concerning amendments to terminate use of methomyl on grapes. This document is being issued to correct the effective date of the amendments.

FOR FURTHER INFORMATION CONTACT: Tom Myers, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (703) 308–8589; *e-mail address: myers.tom@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

The Agency included in the notice a list of those who may be potentially affected by this action. If you have 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 identification (ID) number EPA–HQ–OPP–2007–0975. 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. What Does this Correction Do?

FR Doc. 2010–30865 published in the **Federal Register** of Wednesday, December 8, 2010 (75 FR 76456) (FRL–8855–6) is corrected as follows:

1. On page 76456, in the second column, the DATES line, is corrected to read "DATES: The amendments are effective May 9, 2011."

2. On page 76457, in the first column, in Unit IV. Cancellation Order, the third sentence which reads in part "The effective date of the * * * " is corrected to read "The effective date of the amendments that are the subject of this notice is May 9, 2011."

List of Subjects

Environmental protection, Agricultural commodities, pesticides and pests.

Dated: January 3, 2011.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2011–344 Filed 1–11–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0012; FRL–8860–9]

Notice of Receipt of a Pesticide Petition Filed for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the Agency's receipt of an initial filing of a pesticide petition proposing the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before February 11, 2011.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2009–0996 and the pesticide petition number *PP 0F7767,* by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2009–0996 and the pesticide petition number *PP 0F7767.* EPA's policy is that all comments received will be included in the docket without change and may be made available on-line 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 regulations.gov or e-mail. The 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 regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the 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 docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the 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.

FOR FURTHER INFORMATION CONTACT: Wanda Henson, Antimicrobials Division (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–6345; e-mail address: *henson.wanda@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially

affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through 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:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. 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.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What action is the agency taking?

EPA is announcing receipt of a pesticide petition filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or modification of regulations in 40 CFR part 174 or part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that the pesticide petition described in this notice contains data or information prescribed in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the pesticide petition. Additional data may be needed before EPA can make a final determination on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition that is the subject of this notice, prepared by the petitioner, is included in a docket EPA has created for this rulemaking. The docket for this petition is available on-line at *http://www.regulations.gov*.

As specified in FFDCA section 408(d)(3), (21 U.S.C. 346a(d)(3)), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

New Tolerance Exemption

PP 0F7767. (EPA–HQ–OPP–2009–0996). Enviro Tech Chemical Services, Inc., 500 Winmoore Way, Modesto, CA 95358, proposes to establish an exemption from the requirement of a tolerance for residues of the antimicrobial potassium hypochlorite, in or on apple; artichoke; asparagus; brussel sprouts; carrot; cauliflower; celery; cherry; cabbage; lettuce; fruits, citrus; cucumber; onion, green; melon; peach; nectarine; plum; pear; pepper, bell; potato; radish; fruit, stone; and tomato. The petitioner believes no analytical method is needed because this petition requests the exemption from the requirement of a tolerance.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 5, 2011.

Joan Harrigan-Farrelly,

Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. 2011–488 Filed 1–11–11: 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0248; FRL–8854–4]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendments by Valent USA registrants to delete uses in certain pesticide registrations. Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any request in the **Federal Register**.

DATES: Unless a request for withdrawal by the registrant is received by February 11, 2011, order will be issued canceling these registrations. Comments must be received on or before February 11, 2011.

Users of these products who desire continued use on crops or sites being

deleted should contact the registrant on or before February 11, 2011.

ADDRESSES: Submit your withdrawal request and comments, identified by docket identification (ID) number EPA–HQ–OPP–2010–0248, by one of the following methods:

- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility's telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Christopher Green, Information Technology and Resources Management Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 347–0367; e-mail address: *green.christopher@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, 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–2010–0248. 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's telephone number is (703) 305–5805.

II. What action is the agency taking?

This notice announces receipt by the Agency of applications from a registrant to delete uses in certain pesticide registrations. The registrations are listed in Table 1 of this unit by registration number, product name, active ingredient, and specific uses deleted. The following requests have a 30-day comment period.

TABLE 1—REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA registration no.	Product name	Active ingredient	Delete use from label
59639–37	Sumagic Plant Growth Regulator	Uniconazole	Outdoor uses (Lathhouse and Shadehouse).
59639–38	Valent Uniconazole-P Technical	Uniconazole	Outdoor uses (Lathhouse and Shadehouse).

Table 2 of this unit includes the name and address of record for the registrant of the products listed in Table 1 of this unit by EPA company number.

TABLE 2—REGISTRANT REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA company No.	Company name and address
59639	Valent USA Corporation, 1600 Riviera Avenue, Suite 200, Walnut Creek, CA 94596–8025.

III. What is the agency's authority for taking this action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

The registrant may choose to withdraw a request for use deletion by submitting the withdrawal in writing to Christopher Green using the methods in **ADDRESSES**. The Agency will consider the written withdrawal request no later than February 11, 2011, for registrations for which the registrant requested a waiver of the 180-day comment period. The registrant, Valent USA Corporation, requested a waiver of the 180-day comment period.

V. Provisions for Disposition of Existing Stocks

The Agency has authorized the registrants to sell or distribute a product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: January 3, 2011.

Oscar Morales,

Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2011–491 Filed 1–11–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket# EPA–RO4–SFUND–2010–0965 FRL–9251–5]

Peach Orchard Road Groundwater Plume Site, Augusta, Richmond County, GA; Notice of Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of settlement.

SUMMARY: Under Section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency has entered into a settlement for reimbursement of past response costs concerning the Peach Orchard Road Groundwater Plume Site located in Augusta, Richmond County, Georgia for publication.

DATES: The Agency will consider public comments on the settlement until February 11, 2011. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

ADDRESSES: Copies of the settlement are available from Ms. Paula V. Painter. Submit your comments, identified by Docket ID No. EPA–RO4–SFUND–2010–0965 or Site name Peach Orchard Road Groundwater Plume Superfund Site by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *http://www.epa.gov/region4/waste/sf/enforce.htm.*
- E-mail: *Painter.Paula@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Paula V. Painter at 404/562–8887.

Dated: November 17, 2010.

Anita L. Davis,

Chief, Superfund Enforcement & Information Management Branch Superfund Division.

[FR Doc. 2011–497 Filed 1–11–11; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act; Notice of Meeting

DATE AND TIME: Wednesday, January 19, 2011, 9:30 a.m. Eastern Time.

PLACE: Commission Meeting Room on the First Floor of the EEOC Office Building, 131 "M" Street, NE., Washington, DC 20507.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Votes, and
2. Human Trafficking and Forced Labor—Invited Panelists

Note: In accordance with the Sunshine Act, the meeting will be open to public observation of the Commission's deliberations and voting. Seating is limited and it is suggested that visitors arrive 30 minutes before the meeting in order to be processed through security and escorted to the meeting room. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides information about Commission meetings on its Web site, *eeoc.gov.*, and provides a recorded announcement a week in advance on future Commission sessions.)

Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TTY) at any time for information on these meetings. The EEOC provides sign language interpretation and Communication Access Realtime Translation (CART) services at Commission meetings for the hearing impaired. Requests for other reasonable accommodations may be made by using the voice and TTY numbers listed above. **CONTACT PERSON FOR MORE INFORMATION:** Stephen Llewellyn, Executive Officer on (202) 663–4070.

Dated: This Notice Issued January 10, 2011.

Stephen Llewellyn,

Executive Officer, Executive Secretariat.

[FR Doc. 2011–655 Filed 1–10–11; 4:15 pm]

BILLING CODE 6570–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission Under Delegated Authority, Comments Requested

January 6, 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 on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid 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 March 14, 2011. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget via fax at 202–395–5167 or via e-mail to *Nicholas_A._Fraser@omb.eop.gov* and to *PRA@fcc.gov* and *Cathy.Williams@fcc.gov.* Include in the e-mail the OMB control number of the collection. If you are unable to submit your comments by e-mail contact the person listed below to make alternate arrangements.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Cathy Williams on 202 418–2918.

OMB Control Number: 3060–0175.

Title: Section 73.1250, Broadcasting Emergency Information.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 50 respondents; 50 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Section 154(i) of the Communications Act of 1934, as amended.

Total Annual Burden: 50 hours.

Total Annual Cost: None.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: 47 CFR Section 73.1250(e) requires that immediately upon cessation of an emergency during which broadcast facilities were used for the transmission of point-to-point messages or when daytime facilities were used during nighttime hours by an AM station, a report in letter form shall be forwarded to the FCC in Washington,

DC, setting forth the nature of the emergency, the dates and hours of the broadcasting of emergency information and a brief description of the material carried during the emergency. A certification of compliance with the non-commercialization provision must accompany the report where daytime facilities are used during nighttime hours by an AM station.

Federal Communications Commission.

Marlene H. Dortch,

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

[FR Doc. 2011–375 Filed 1–11–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

January 5, 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 March 14, 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 e-mail to *Nicholas_A._Fraser@omb.eop.gov* and to the Federal Communications Commission via e-mail to *PRA@fcc.gov* and *Cathy.Williams@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Cathy Williams on (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0236.

Title: Sections 74.703, Interference.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not for profit institutions; State, local or Tribal government.

Number of Respondents and Responses: 50 respondents; 150 responses.

Estimated Time per Response: 2 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Section 154(i) of the Communications Act of 1934, as amended.

Total Annual Burden: 300 hours.

Total Annual Cost: 300,000.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: The Commission adopted on September 9, 2004, the *Report and Order (R&O),* In the Matter of Amendment of Parts 73 and 74 of the Commission's Rules To Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and To Amend Rules for Digital Class A Television Stations, MB Docket No. 03–185, FCC 04–220. The following rule sections which contain information requirements were adopted:

47 CFR Section 74.703(f) states that a licensee of a digital low power TV (LPTV) or TV translator station operating on a channel from 52–69 is required to eliminate at its expense any condition of interference caused to the operation of or services provided by existing and future commercial or public safety wireless licensees in the 700 MHz bands. The offending digital LPTV or translator station must cease operations immediately upon notification by any primary wireless licensee, once it has been established that the digital low power TV or translator station is causing the interference.

47 CFR Section 74.703(g) states that an existing or future wireless licensee in the 700 MHz bands may notify (certified mail, return receipt requested), a digital low power TV or TV translator operating on the same channel or first adjacent channel of its intention to initiate or change wireless operations and the likelihood of interference from the low power TV or translator station within its licensed geographic service area. The notice should describe the facilities, associated service area and operations of the wireless licensee with sufficient detail to permit an evaluation of the likelihood of interference. Upon receipt of such notice, the digital LPTV or TV translator licensee must cease operation within 120 days unless: (1) It obtains the agreement of the wireless licensee to continue operations; (2) the commencement or modification of wireless service is delayed beyond that period (in which case the period will be extended); or (3) the Commission stays the effect of the interference notification, upon request.

47 CFR 74.703(h) requires in each instance where suspension of operation is required, the licensee shall submit a full report to the FCC in Washington, DC, after operation is resumed, containing details of the nature of the interference, the source of the interfering signals, and the remedial steps taken to eliminate the interference.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director, Federal Communications Commission.

[FR Doc. 2011–376 Filed 1–11–11; 8:45 am]

BILLING CODE 6712–01–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.: 011743–006.

Title: Global Transportation Network Agreement.

Parties: APL Co. Pte. Ltd.; American President Lines, Ltd.; Companhia Libra de Navegacaó; Compania Sud-Americana de Vapores, S.A.; CP Ships (U.K.) Ltd.; Crowley Liner Services, Inc.; CP Ships USA, LLC; Hanjin Shipping Co., Ltd.; Kawasaki Kisen Kaisha, Ltd.; Mitsui O.S.K. Lines, Ltd.; Montemar Maritima, S.A.; Norasia Container Lines Limited; Senator Lines GmbH; Wan Hai Lines Ltd.; Yangming Marine Transport Corp.; Zim Integrated Shipping Services, Ltd.

Filing Party: Eric C. Jeffrey, Esq.; Goodwin Procter LLP; 901 New York Avenue, NW., Washington, DC 20001.

Synopsis: The amendment updates the corporate address of American President Line's corporate address.

Agreement No.: 201207–002.

Title: Terminal 6 Lease Agreement Between the Port of Portland and ICTSI Oregon, Inc.

Parties: Port of Portland and ICTSI Oregon, Inc.

Filing Party: Paul D. Coleman, Esq.; Hoppel, Mayer & Coleman; 1050 Connecticut Avenue, NW., 10th Floor; Washington, DC 20036.

Synopsis: The amendment provides for a berth access road through Terminal 6 for Berth 601 users.

Agreement No.: 201210.

Title: Port of NY/NJ Port Authority/ Marine Terminal Operators Agreement.

Parties: APM Terminals North America, Inc.; Global Terminal & Container Services LLC; Maher Terminals LLC; New York Container Terminal, Inc.; and Port Newark Container Terminal LLC.

Filing Party: Carol N. Lambos, Esq.; The Lambos Firm, LLP; 303 South Broadway, Suite 410, Tarrytown, NY 10591.

Synopsis: The agreement would authorize the parties to collect and exchange information, to discuss and agree on measures to promote environmentally sustainable, efficient, and secure marine terminal operations, to assist the Port Authority in implementation of the Port Authority's Clean Air Strategy to improve the air quality in the PONYNJ community. The parties have requested expedited review.

By Order of the Federal Maritime Commission.

Dated: January 7, 2011.

Karen V. Gregory,

Secretary.

[FR Doc. 2011–508 Filed 1–11–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTION GRANTED EARLY TERMINATION

Et date	Trans num	Et req status	Party name
20–DEC–10	20110142	G	McKesson Corporation.
		G	Welsh, Carson, Anderson & Stowe IX, L.P.
		G	US Oncology Holdings, Inc.
	20110293	G	Boston Scientific Corporation.
		G	Sadra Medical, Inc.
		G	Sadra Medical, Inc.
	20110297	G	The NASDAQ OMX Group, Inc.
		G	Vat E Vaden.
		G	FTEN, Inc.
	20110357	G	Oak Hill Capital Partners II, L.P.
		G	Vantage Oncology, Inc.
		G	Vantage Oncology, Inc.
	20110358	G	Vantage Oncology, Inc.
		G	Oak Hill Capital Partners II, L.P.
		G	Physician Oncology Services, LLC.
	20110372	G	Ebro Foods S.A.
		G	Ricegrowers Limited
		G	Ricegrowers Limited.
	20110378	G	Brightpoint, Inc.
		G	The Richard Arnesen Graham Family Descendants' Trust.
		G	Touchstone Wireless Repair and Logistics, LP.
	20110379	G	Aetna, Inc.
		G	Medicity, Inc.
		G	Medicity, Inc.
	20110384	G	Illinois Tool Works Inc.
		G	Royal Dutch Shell plc.
		G	Pennzoil-Quaker State Company.
21–DEC–10	20110377	G	Helen of Troy Limited.
		G	Kaz, Inc.
		G	Kaz, Inc.
23–DEC–10	20110304	G	Roche Holding Ltd.
		G	Marcadia Biotech, Inc.

TRANSACTION GRANTED EARLY TERMINATION—Continued

Et date	Trans num	Et req status	Party name
		G	Marcadia Biotech, Inc.
27 EC–10	20110318	G	STG III, L.P.
		G	CoreLogic, Inc.
		G	First Advantage Tax Consulting Services LLC.
		G	First Advantage Litigation Consulting LLC.
		G	First Advantage Eurasia Litigation Consulting.
		G	CoreLogic, Inc.
		G	Accufacts Pre-Employment Screening, Inc.
		G	First Advantage Canada, Inc.
		G	First Advantage Europe Ltd.
		G	Verify Limited.
		G	First Advantage Japan KK.
		G	First Advantage Occupational Health Services Corp.
		G	First Advantage Enterprise Screening Corp.
		G	First Advantage Background Services Corp.
		G	First American Indian Holdings, LLC.
		G	Pride Rock Holding Company, Inc.
		G	First Advantage Philippines, Inc.
		G	First Advantage Australasia Pty. Ltd.
		G	First Advantage (Beijing) Co. Ltd.
		G	First Advantage Quest Research Group Ltd.
		G	First Advantage Litigation Consulting Japan GK.
	20110391	G	H.I.G. Bayside Debt & LBO Fund II, L.P.
		G	Matrixx Initiatives, Inc.
		G	Matrixx Initiatives, Inc.
	20110393	G	Prestige Brands Holdings, Inc.
		G	Johnson & Johnson. G McNEIL–PPC, Inc.
	20110395	G	PBF Energy Company LLC.
		G	Sunoco, Inc.
		G	Sunoco, Inc. (R&M).
	20110396	G	TPG VI DE AIV II, L.P.
		G	Ashland Inc.
		G	Ashland International Holdings, Inc.
		G	Ashland Licensing and Intellectual Property LLC.
	20110398	G	Exxon Mobil Corporation.
		G	Petrohawk Energy Corporation.
		G	One Tec, LLC.
		G	KCS Resources, LLC.
		G	Petrohawk Properties, LP.
		G	Hawk Field Services, LLC.
		G	Petrohawk Operating Company.
		G	One Tec Operating, LLC.
27–DEC–10	20110399	G	Lennox International Inc.
		G	The Manitowoc Company, inc.
		G	Kysor Industrial Corporation.
		G	Kysor Warren de Mexicp S.de. R.L. de C.V.
	20110406	G	Carl C. Icahn.
		G	Dynegy Inc.
		G	Dynegy Inc.
	20110407	G	China Huaneng Group.
		G	InterGen N.V.
		G	InterGen N.V.
	20110408	G	Grupo Empresarial Kaluz, S.A. de C.V.
		G	Rockwood Holdings, Inc.
		G	AlphaGary Corporation.
28–DEC–10	20100854	G	Keystone Holdings, LLC.
		G	Compagnie de Saint-Gobain.
		G	Saint-Gobain Ceramics & Plastics, Inc.
		G	Saint-Gobain Advanced Ceramics Corporation.
	20110394	G	Aceto Corporation.
		G	Ronald Gold.
		G	Rising Pharmaceuticals, Inc.
29–DEC–10	20110402	G	M & F Worldwide Corp.
		G	Knowledge Universe Limited LLC.
		G	KUED Sub II LLC.
		G	KUE Digital Inc.
		G	KUED Sub I LLC.
30–DEC–10	20110385	G	Fairfax Financial Holdings Limited.
		G	AbitibiBowater Inc.
		G	AbitibiBowater Inc.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative or Renee Chapman, Contact Representative, Federal Trade Commission, Premerger Notification Office, Bureau Of Competition, Room H–303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2011–334 Filed 1–11–11; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency took any action with respect to these proposed acquisitions during the applicable waiting period.

ET DATE	Trans Num	Et Req Status	Party Name
01–MAY–09 ..	20090415	G	MatlinPatterson Global Opportunities Partners III L.P.
01–MAY–09 ..	20090415	G	D.E. Shaw Composite International Fund
01–MAY–09 ..	20090415	G	Foamex International, Inc.
01–MAY–09 ..	20090420	G	GS Capital Partners VI, L.P.
01–MAY–09 ..	20090420	G	Global Hyatt Corporation
01–MAY–09 ..	20090420	G	Global Hyatt Corporation
08–JUN–09 ..	20090490	G	Occidental Petroleum Corporation
08–JUN–09 ..	20090490	G	The Dow Chemical Company
08–JUN–09 ..	20090490	G	The Dow Chemical Company
09–JUN–09 ..	20090496	G	Caisse Nationale des Caisses d'Epargne
09–JUN–09 ..	20090496	G	CEBP SA
09–JUN–09 ..	20090496	G	CEBP SA
09–JUN–09 ..	20090498	G	Banque Federale des Banques Populaires
09–JUN–09 ..	20090498	G	CEBP SA
09–JUN–09 ..	20090498	G	CEBP SA
10–JUN–09 ..	20090477	G	AT&T Inc.
10–JUN–09 ..	20090477	G	Verizon Communications Inc.
10–JUN–09 ..	20090477	G	Newco LLC
12–JUN–09 ..	20090504	G	Clayton, Dubilier & Rice Fund VII, L.P.
12–JUN–09 ..	20090504	G	Hertz Global Holdings, Inc.
12–JUN–09 ..	20090504	G	Hertz Global Holdings, Inc.
16–JUN–09 ..	20090511	G	Vista Equity Partners Fund III, L.P.
16–JUN–09 ..	20090511	G	SumTotal Systems, Inc.
16–JUN–09 ..	20090511	G	SumTotal Systems, Inc.
17–JUN–09 ..	20090503	G	Carlyle Partners IV, L.P.
17–JUN–09 ..	20090503	G	Hertz Global Holdings, Inc.
17–JUN–09 ..	20090503	G	Hertz Global Holdings, Inc.
17–JUN–09 ..	20090514	G	Johnson & Johnson
17–JUN–09 ..	20090514	G	Cougar Biotechnology, Inc.
17–JUN–09 ..	20090514	G	Cougar Biotechnology, Inc.
17–JUN–09 ..	20090515	G	OCM/GFI Power Opportunities Fund II, L.P.
17–JUN–09 ..	20090515	G	Robert David Sheehan, Jr.
17–JUN–09 ..	20090515	G	Sheehan Pipe Line Construction Company
18–JUN–09 ..	20090493	G	Novant Health, Inc.
18–JUN–09 ..	20090493	G	Prince William Health System
18–JUN–09 ..	20090493	G	Prince William Health System
18–JUN–09 ..	20090499	G	The Johns Hopkins Health System Corporation
18–JUN–09 ..	20090499	G	Suburban Hospital Healthcare System, Inc.
18–JUN–09 ..	20090499	G	Suburban Hospital Healthcare System, Inc.
18–JUN–09 ..	20090527	G	Alternative Asset Management Acquisition Corp.
18–JUN–09 ..	20090527	G	Andrew Gumaer
18–JUN–09 ..	20090527	G	Great American Group, LLC
18–JUN–09 ..	20090528	G	Alternative Asset Management Acquisition Corp.
18–JUN–09 ..	20090528	G	Harvey M. Yellen
18–JUN–09 ..	20090528	G	Great American Group, LLC
19–JUN–09 ..	20090486	G	Schering-Plough Corporation
19–JUN–09 ..	20090486	G	Novartis AG
19–JUN–09 ..	20090486	G	Novartis Pharma AG
19–JUN–09 ..	20090487	G	Novartis AG
19–JUN–09 ..	20090487	G	Schering-Plough Corporation
19–JUN–09 ..	20090487	G	Schering-Plough Ltd.
23–JUN–09 ..	20090532	G	S. Kumars Nationwide Ltd.
23–JUN–09 ..	20090532	G	Hartmarx Corporation
23–JUN–09 ..	20090532	G	Hartmarx Corporation

ET DATE	Trans Num	Et Req Status	Party Name
25-JUN-09 ..	20090505	G	Valline Sri.
25-JUN-09 ..	20090505	G	Cornerstone Therapeutics Inc.
25-JUN-09 ..	20090505	G	Cornerstone Therapeutics Inc.
25-JUN-09 ..	20090512	G	Sumitomo Metal Mining Co., Ltd.
25-JUN-09 ..	20090512	G	Teck Resources Limited
25-JUN-09 ..	20090512	G	Teck-Pogo, Inc.
25-JUN-09 ..	20090526	G	Golden Gate Capital Opportunity Fund, L.P.
25-JUN-09 ..	20090526	G	Aeon Co. Ltd.
25-JUN-09 ..	20090526	G	J. Jill, LLC
25-JUN-09 ..	20090526	G	Birch Pond Realty Corporation
26-JUN-09 ..	20090537	G	Communications Infrastructure Investments, LLC
26-JUN-09 ..	20090537	G	FiberNet Telecom Group, Inc.
26-JUN-09 ..	20090537	G	FiberNet Telecom Group, Inc.
26-JUN-09 ..	20090541	G	Aquiline Financial Services Fund L.P.
26-JUN-09 ..	20090541	G	Swiss Reinsurance Company Ltd.
26-JUN-09 ..	20090541	G	Conning & Company
26-JUN-09 ..	20090541	G	Conning Asset Management (Europe) Limited
26-JUN-09 ..	20090541	G	Conning Asset Management Limited
29-JUN-09 ..	20090492	G	John C. Malone
29-JUN-09 ..	20090492	G	Liberty Entertainment, Inc.
29-JUN-09 ..	20090492	G	Liberty Entertainment, Inc.
02-JUL-09 ...	20090502	G	EMC Corporation
02-JUL-09 ...	20090502	G	Data Domain, Inc.
02-JUL-09 ...	20090502	G	Data Domain, Inc.
02-JUL-09 ...	20090506	G	NetApp, Inc.
02-JUL-09 ...	20090506	G	Data Domain, Inc.
02-JUL-09 ...	20090506	G	Data Domain, Inc.
06-JUL-09 ...	20090543	G	Golden Gate Capital Opportunity Fund, L.P.
06-JUL-09 ...	20090543	G	SoftBrands, Inc.
06-JUL-09 ...	20090543	G	SoftBrands, Inc.
06-JUL-09 ...	20090544	G	Nokia Corporation
06-JUL-09 ...	20090544	G	Nortel Networks Corporation
06-JUL-09 ...	20090544	G	Nortel Networks Corporation
06-JUL-09 ...	20090545	G	SAIC, Inc.
06-JUL-09 ...	20090545	G	R.W. Beck Group, Inc
06-JUL-09 ...	20090545	G	R.W. Beck Group, Inc
06-JUL-09 ...	20090553	G	CCMP Capital Investors II, L.P.
06-JUL-09 ...	20090553	G	Eddie Bauer Holdings, Inc.
06-JUL-09 ...	20090553	G	Eddie Bauer Holdings, Inc.
07-JUL-09 ...	20090539	G	Sageview Capital Master, L.P.
07-JUL-09 ...	20090539	G	Gerresheimer AG
07-JUL-09 ...	20090539	G	Gerresheimer AG
08-JUL-09 ...	20090551	G	Barclays PLC
08-JUL-09 ...	20090551	G	BlackRock
08-JUL-09 ...	20090551	G	BlackRock
08-JUL-09 ...	20090552	G	BlackRock, Inc.
08-JUL-09 ...	20090552	G	Barclays PLC
08-JUL-09 ...	20090552	G	Barclays California Corporation
10-JUL-09 ...	20090565	G	Harold Hamm
10-JUL-09 ...	20090565	G	Hiland Partners, LP
10-JUL-09 ...	20090565	G	Hiland Partners, LP
13-JUL-09 ...	20081721	G	Markit Group Holdings Limited
13-JUL-09 ...	20081721	G	Newco JV LLC
13-JUL-09 ...	20081721	G	Newco JV LLC
14-JUL-09 ...	20090522	G	Intuit Inc.
14-JUL-09 ...	20090522	G	PayCycle, Inc.
14-JUL-09 ...	20090522	G	PayCycle, Inc.
15-JUL-09 ...	20090542	G	Smith & Wesson Holding Corporation
15-JUL-09 ...	20090542	G	Universal Safety Response, Inc.
15-JUL-09 ...	20090542	G	Universal Safety Response, Inc.
17-JUL-09 ...	20090363	G	Oracle Corporation
17-JUL-09 ...	20090363	G	Devendra D. Bajaj and Sonia Bajaj
17-JUL-09 ...	20090363	G	Relsys Corporation
17-JUL-09 ...	20090363	G	Relsys International, Inc.
17-JUL-09 ...	20090562	G	MetLife, Inc.
17-JUL-09 ...	20090562	G	AIG Credit Facility Trust
17-JUL-09 ...	20090562	G	Mansfield 2007 Trust D
17-JUL-09 ...	20090562	G	Mansfield 2007 Trust E
17-JUL-09 ...	20090562	G	Mansfield 2007 Trust B
17-JUL-09 ...	20090562	G	Mansfield 2007 Trust A
17-JUL-09 ...	20090562	G	Mansfield 2007 Trust C
17-JUL-09 ...	20090573	G	Tower Group, Inc.
17-JUL-09 ...	20090573	G	Specialty Underwriters' Alliance, Inc.

ET DATE	Trans Num	Et Req Status	Party Name
17–JUL–09 ...	20090573	G	Specialty Underwriters Alliance, Inc.
17–JUL–09 ...	20090576	G	2003 TIL Settlement
17–JUL–09 ...	20090576	G	Thomson Reuters PLC
17–JUL–09 ...	20090576	G	Thomson Reuters PLC
17–JUL–09 ...	20090588	G	BG Group plc
17–JUL–09 ...	20090588	G	EXCO Resources, Inc.
17–JUL–09 ...	20090588	G	EXCO Operating Company, LP
17–JUL–09 ...	20090588	G	Midstream NEWCO, LLC
17–JUL–09 ...	20090588	G	TGG Pipeline, Ltd.
17–JUL–09 ...	20090588	G	GP Holding, LLC
17–JUL–09 ...	20090588	G	Talco Midstream Assets, Ltd.
17–JUL–09 ...	20090588	G	EXCO Production Company, LP
20–JUL–09 ...	20090578	G	VSS–Cambium Holdings, LLC
20–JUL–09 ...	20090578	G	Voyager Learning Company
20–JUL–09 ...	20090578	G	Voyager Learning Company
21–JUL–09 ...	20090547	G	MedStar Health, Inc.
21–JUL–09 ...	20090547	G	St. Mary's Hospital of St. Mary's County, Inc.
21–JUL–09 ...	20090547	G	St. Mary's Hospital of St. Mary's County, Inc.
21–JUL–09 ...	20090563	G	Peninsula Gaming Partners, LLC
21–JUL–09 ...	20090563	G	William J. Yung III
21–JUL–09 ...	20090563	G	Belle of Orleans, L.L.C.
21–JUL–09 ...	20090566	G	Shanghai Electric (Group) Corporation
21–JUL–09 ...	20090566	G	MatlinPatterson Global Opportunities Partners L.P.
21–JUL–09 ...	20090566	G	Goss International Corporation
21–JUL–09 ...	20090581	G	Roark Capital Partners II, LP
21–JUL–09 ...	20090581	G	Waste Pro USA, Inc.
21–JUL–09 ...	20090581	G	Waste Pro USA, Inc.
21–JUL–09 ...	20090582	G	PCG Exchange, Inc. Employee Stock Ownership Plan
21–JUL–09 ...	20090582	G	ALG QSST Trust
21–JUL–09 ...	20090582	G	Academic Loan Group, Inc.
24–JUL–09 ...	20090558	G	Verizon Communications Inc.
24–JUL–09 ...	20090558	G	AT&T Inc.
24–JUL–09 ...	20090558	G	Newco LLC
27–JUL–09 ...	20090598	G	Golden Gate Capital Opportunity Fund, L.P.
27–JUL–09 ...	20090598	G	Eddie Bauer Holdings, Inc.
27–JUL–09 ...	20090598	G	Eddie Bauer Holdings, Inc.
28–JUL–09 ...	20090575	G	Ramius LLC
28–JUL–09 ...	20090575	G	Cowen Group, Inc.
28–JUL–09 ...	20090575	G	Cowen Group, Inc.
31–JUL–09 ...	20090601	G	BancIndependent, Incorporated
31–JUL–09 ...	20090601	G	Regions Financial Corporation
31–JUL–09 ...	20090601	G	Regions Interstate Billing Service, Inc.
31–JUL–09 ...	20090602	G	Oracle Corporation
31–JUL–09 ...	20090602	G	GoldenGate Software, Inc.
31–JUL–09 ...	20090602	G	GoldenGate Software, Inc.
31–JUL–09 ...	20090608	G	Fortis Bank Nederland (Holding) N.V.
31–JUL–09 ...	20090608	G	Fortis Bank S.A./N.V.
31–JUL–09 ...	20090608	G	Fortis Clearing Americas LLC
03–AUG–09 ..	20090605	G	Huntsman Gay Capital Partners Fund, L.P.
03–AUG–09 ..	20090605	G	Grand Isle Shipyard, Inc.
03–AUG–09 ..	20090605	G	Grand Isle Shipyard, Inc.
03–AUG–09 ..	20090610	G	Apax Europe VII–B, LP.
03–AUG–09 ..	20090610	G	Bankrate, Inc.
03–AUG–09 ..	20090610	G	Bankrate, Inc.
05–AUG–09 ..	20090606	G	Lockheed Martin Corporation
05–AUG–09 ..	20090606	G	Jagen Pty Limited
05–AUG–09 ..	20090606	G	Gyrocam Systems LLC
06–AUG–09 ..	20090568	G	Watson Wyatt Worldwide, Inc.
06–AUG–09 ..	20090568	G	Towers, Perrin, Forster & Crosby, Inc.
06–AUG–09 ..	20090568	G	Towers, Perrin, Forster & Crosby, Inc.
06–AUG–09 ..	20090569	G	Towers, Perrin, Forster & Crosby, Inc.
06–AUG–09 ..	20090569	G	Watson Wyatt Worldwide, Inc.
06–AUG–09 ..	20090569	G	Watson Wyatt Worldwide, Inc.
07–AUG–09 ..	20090517	G	General Dynamics Corporation
07–AUG–09 ..	20090517	C	Axsys Technologies, Inc.
07–AUG–09 ..	20090517	G	Axsys Technologies, Inc.
07–AUG–09 ..	20090572	G	Covanta Holding Corporation
07–AUG–09 ..	20090572	G	Veolia Environnement S.A.
07–AUG–09 ..	20090572	G	Montenay International Corp.
07–AUG–09 ..	20090619	G	Aflac Incorporated
07–AUG–09 ..	20090619	G	Leon S. Goodall
07–AUG–09 ..	20090619	G	Continental American Insurance Group, Inc.
11–AUG–09 ..	20090609	G	International Assets Holding Corporation

ET DATE	Trans Num	Et Req Status	Party Name
11–AUG–09 ..	20090609	G	FCStone Group, Inc.
11–AUG–09 ..	20090609	G	FCStone Group, Inc.
11–AUG–09 ..	20090618	G	Pharos-TPG Co-Investment Fund, L.P.
11–AUG–09 ..	20090618	G	Lighthouse Holdings Parent, Inc.
11–AUG–09 ..	20090618	G	Lighthouse Holdings Parent, Inc.
12–AUG–09 ..	20090614	G	Republic Airways Holdings, Inc.
12–AUG–09 ..	20090614	G	Frontier Airlines Holdings, Inc.
12–AUG–09 ..	20090614	G	Frontier Airlines Holdings, Inc.
18–AUG–09 ..	20090648	G	McAfee, Inc.
18–AUG–09 ..	20090648	G	MX Logic, Inc.
18–AUG–09 ..	20090648	G	MX Logic, Inc.
20–AUG–09 ..	20090427	G	Arch Coal, Inc.
20–AUG–09 ..	20090427	G	Rio Tinto plc
20–AUG–09 ..	20090427	G	Jacobs Ranch Coal LLC
20–AUG–09 ..	20090448	G	Oracle Corporation
20–AUG–09 ..	20090448	G	Sun Microsystems, Inc.
20–AUG–09 ..	20090448	G	Sun Microsystems, Inc.
21–AUG–09 ..	20090655	G	Sprint Nextel Corporation
21–AUG–09 ..	20090655	G	Virgin Mobile USA, Inc.
21–AUG–09 ..	20090655	G	Virgin Mobile USA, Inc.
21–AUG–09 ..	20090657	G	ArcLight Energy Partners Fund III, L.P.
21–AUG–09 ..	20090657	G	PPL Corporation
21–AUG–09 ..	20090657	G	PPL Maine, LLC
21–AUG–09 ..	20090661	G	ArcLight Energy Partners Fund IV, LP.
21–AUG–09 ..	20090661	G	PPL Corporation
21–AUG–09 ..	20090661	G	PPL Maine, LLC
21–AUG–09 ..	20090665	G	Targa Resources Partners LP
21–AUG–09 ..	20090665	G	Targa Resources Investments Inc.
21–AUG–09 ..	20090665	G	Targa LSNG LP
21–AUG–09 ..	20090665	G	Targa Downstream GP LLC
21–AUG–09 ..	20090665	G	Targa Downstream LP
21–AUG–09 ..	20090665	G	Targa LSNG GP LLC
24–AUG–09 ..	20090647	G	Aetna Inc.
24–AUG–09 ..	20090647	G	Psychiatric Solutions, Inc.
24–AUG–09 ..	20090647	G	Horizon Behavioral Services, LLC
24–AUG–09 ..	20090653	G	Manulife Financial Corporation
24–AUG–09 ..	20090653	G	PPL Corporation
24–AUG–09 ..	20090653	G	PPL Edgewood Energy, LLC
24–AUG–09 ..	20090653	G	PPL Shoreham Energy, LLC
24–AUG–09 ..	20090654	G	Electric Power Development Co., Ltd.
24–AUG–09 ..	20090654	G	PPL Corporation
24–AUG–09 ..	20090654	G	PPL Edgewood Energy, LLC
24–AUG–09 ..	20090654	G	PPL Shoreham Energy, LLC
25–AUG–09 ..	20090664	G	Sentara Healthcare
25–AUG–09 ..	20090664	G	Potomac Hospital Foundation
25–AUG–09 ..	20090664	G	Potomac Hospital Corporation of Prince William
26–AUG–09 ..	20090645	G	Iochpe-Maxion S.A.
26–AUG–09 ..	20090645	G	ArvinMeritor, Inc.
26–AUG–09 ..	20090645	G	ArvinMeritor OE, LLC
26–AUG–09 ..	20090645	G	Servicios Corporativos ArvinMeritor, S.A. de C.V.
26–AUG–09 ..	20090645	G	Mentor Comercio Industria de Sistemas Automotivos Ltda
26–AUG–09 ..	20090645	G	Mentor LVS S.A. de CV.
28–AUG–09 ..	20090672	G	JPMorgan Chase & Co.
28–AUG–09 ..	20090672	G	ArthroCare Corporation
28–AUG–09 ..	20090672	G	ArthroCare Corporation
28–AUG–09 ..	20090676	G	Noble Group Limited
28–AUG–09 ..	20090676	G	SemGroup, L.P.—Debtor-in-Possession
28–AUG–09 ..	20090676	G	SemFuel, L.P.—Debtor-in-Possession
15–SEP–09 ..	20090713	G	Comvest Investment Partners III, LP
15–SEP–09 ..	20090713	G	Cynergy Data, LLC
15–SEP–09 ..	20090713	G	Cynergy Data, LLC
16–SEP–09 ..	20090710	G	SPO Partners II, L.P.
16–SEP–09 ..	20090710	G	Resolute Energy Corporation
16–SEP–09 ..	20090710	G	Resolute Energy Corporation

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative or Renee Chapman, Contact Representative. Federal Trade Commission, Premerger Notification Office, Bureau Of Competition, Room H–303, Washington, DC 20580, (202) 326–3100.

By direction of the commission.

Donald S. Clark,

Secretary.

[FR Doc. 2011–324 Filed 1–11–11; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier OS–0990–032; 60-Day Notice]

Agency Information Collection Request. 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden. To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above email address within 60-days.

Title: HHS Web Site Customer Satisfaction Survey—0990–0321—Office of the Assistant Secretary for Public Affairs.

Abstract: The results of the HHS Web Site Customer Satisfaction Survey will be used to ensure that the content on the HHS Web sites meets visitor needs and expectations. The results will also determine if the site is easy to use and the content easy to understand.

ESTIMATED ANNUALIZED BURDEN TABLE

Form	Number of respondents	Number of responses per respondent	Average burden hours per response (in hrs.)	Total burden hours
Survey	48,000	1	12/60	9,600

Seleda Perryman,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2011–428 Filed 1–11–11; 8:45 am]

BILLING CODE 4150–25–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: "Questionnaire and Data Collection Testing, Evaluation, and Research for the Agency for Healthcare Research and Quality." In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3520, AHIRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by March 14, 2011.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by e-mail at *doris.lefkowitz@AHRQ.hhs.gov.*

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by e-mail at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Questionnaire and Data Collection Testing, Evaluation, and Research for the Agency for Healthcare Research and Quality

The Agency for Healthcare Research and Quality (AHRQ) requests that the Office of Management and Budget (OMB) re-approve generic pre-testing clearance 0935–0124 for three years to facilitate AHRQ's efforts to (1) employ evaluation-type methods and techniques to improve AHRQ's current data collection and estimation procedures, (2) develop new collections and procedures, including toolkits, and (3) revise existing collections and procedures. AHRQ uses techniques to simplify data collection and estimation procedures, reduce respondent burden, and improve efficiencies to meet the needs of individuals and small business respondents who may have reduced budgets and staff. AHRQ believes that developing, testing, and evaluating data collection and estimation procedures using survey methods and other techniques in anticipation of agency-sponsored studies can improve its information collection efforts and the products it develops and allow AHRQ to be more responsive to fast-changing developments in the healthcare research field.

This clearance request is limited to research on data collection, toolkit development, and estimation procedures and reports and does not extend to the collection of data for public release or policy formation. The current clearance was granted on April 3rd 2008 and expires on April 30th, 2011.

This generic clearance will allow AHRQ to draft and test toolkits, survey instruments and other data collection and estimation procedures more quickly and with greater lead time, thereby managing project time more efficiently and improving the quality of the data AHRQ collects. In some instances, the ability to test and evaluate toolkits, data collection and estimation procedures in anticipation of work or early in a project may result in the decision not to proceed with additional activities, thereby saving both public and private resources and effectively eliminating respondent burden.

Many of the tools AHRQ develops are made available to the private sector to assist in improving health care quality. The health and health care environment

changes rapidly and requires a quick response from AHRQ to provide refined tools. This generic clearance will facilitate AHRQ' s response to this changing environment.

These preliminary research activities will not be used by AHRQ to regulate or sanction its customers. They will be entirely voluntary and the confidentiality of respondents and their responses will be preserved. Proposed information collections submitted under this generic clearance will be reviewed and acted upon by OMB within 14 days of submission to OMB.

Method of Collection

The information collected through preliminary research activities will be used by AHRQ to employ techniques to (1) improve AHRQ's current data collection and estimation procedures, (2) develop new collections and procedures, including toolkits, and (3) revise existing collections and procedures in anticipation or in response to changes in the health or health care field. The end result will be improvement in AHRQ's data collections and procedures and the quality of data collected, a reduction or minimization of respondent burden, increased agency efficiency, and improved responsiveness to the public.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated burden hours, over the full 3 years of this clearance, for the respondents' time to participate in the research activities that may be conducted under this generic clearance. Mail surveys will be conducted with about 6,000 persons (2,000 per year for 3 years) and are estimated to average 20 minutes. Mail surveys may also be sent to respondents via e-mail, and may include a telephone non-response follow-up. Telephone non-response follow-up for mailed surveys is not counted as a telephone survey in Exhibit 1. Not more than 600 persons, over 3 years, will participate in telephone surveys that will take about 40 minutes. Web-based surveys will be conducted with no more than 3,000 persons and will require no more than 10 minutes to complete. About 1,500 persons will participate in focus groups which may last up to two hours, while in-person interviews will be conducted with 600 persons and will take about 50 minutes. Automated data collection will be conducted for about 1,500 persons and could take up to 1 hour. Cognitive testing will be conducted with about 600 persons and is estimated to take 1 ½ hours to complete. The total burden over 3 years is estimated to be 8,900 hours (about 2,967 hours per year).

Exhibit 2 shows the estimated cost burden over 3 years, based on the respondent's time to participate in these research activities. The total cost burden is estimated to be $298,239.

EXHIBIT 1—ESTIMATED BURDEN HOURS OVER 3 YEARS

Type of information collection	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Mail/e-mail *	6,000	1	20/60	2,000
Telephone	600	1	40/60	400
Web-based	3,000	1	10/60	500
Focus Groups	1,500	1	2.0	3,000
In-person	600	1	1.0	600
Automated **	1,500	1	1.0	1,500
Cognitive Testing ***	600	1	1.5	900
Totals	13,800	na	na	8,900

*May include telephone non-response follow-up in which case the burden will not change.
**May include testing of database software, CAPI software or other automated technologies.
***May include cognitive interviews for questionnaire or toolkit development, or "think aloud" testing of prototype Web sites.

EXHIBIT 2—ESTIMATED COST BURDEN OVER 3 YEARS

Type of information collection	Number of respondents	Total burden hours	Average hourly wage rate *	Total cost burden
Mail/e-mail	6,000	2,000	$33.51	$67,020
Telephone	600	400	33.51	13,404
Web-based	3,000	500	33.51	16,755
Focus Groups	1,500	3,000	33.51	100,530
In-person	600	600	33.51	20,106
Automated **	1,500	1,500	33.51	50,265
Cognitive Testing ***	600	900	33.51	30,159
Totals	13,800	8,900	na	298,239

*Based upon the average wages for 29–000 (Healthcare Practitioner and Technical Occupations), "National Compensation Survey: Occupational Wages in the United States, May 2009," U.S. Department of Labor, Bureau of Labor Statistics.

Estimated Annual Costs to the Federal Government

Information collections conducted under this generic clearance will in some cases be carried out under contract. Assuming four data collections per year (either mail/e-mail, telephone, Web based or in-person) at an average cost of $150,000 each, and two focus groups, automated data collections or lab experiments at an average cost of $20,000 each, total contract costs could be $640,000 per year.

Request for Comments

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of

AHRQ healthcare research and healthcare information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: January 4, 2011.

Carolyn M. Clancy,

Director.

[FR Doc. 2011–405 Filed 1–11–11; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–11–11AD]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Surveys of State, Tribal, Local, and Territorial (STLT) Governmental Health Agencies—New—Office of the Director, Office for State, Tribal Local and Territorial Support (OSTLTS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC's mission includes addressing the leading causes of disease, injury, and disability in the United States, including a focus on tobacco control; improving nutrition, physical activity, and food safety; reducing healthcare-associated infections; preventing motor vehicle injuries; preventing teen pregnancy; and preventing HIV. CDC's priorities for approaching improvements to public health include—strengthening surveillance, epidemiology, and laboratory science; better supporting efforts in states and communities; and pursuing policies that have an impact. As such, CDC's relationship with state, local, tribal and territorial (STLT) governmental health officials is key to its emergency preparedness, health promotion and disease prevention responsibilities.

CDC is requesting a three-year approval for a generic clearance to assess information related to a myriad of public health issues that affect STLT health agencies. Information will be used to assess situational awareness of current public health emergencies, make decisions that will affect planning, response and recovery activities of subsequent emergencies, and fill gaps in knowledge that will strengthen surveillance, epidemiology, and laboratory science; better supporting efforts in states and communities. CDC will conduct short surveys, across a range of public health topics, using standard questionnaire administration approaches (*e.g.*, phone, Web, e-mail, and paper, in person).

The burden is calculated based on the assumption of querying at most 100% of all available State, territorial (60) and county (3000) health officials/employees and a representative sample of at most 100 municipal/city employees. CDC estimates that it will conduct up to 48 queries with State, territorial or tribal health officials/employees, 6 queries with county health employees, and 6 queries with municipal health employees each year. The total annualized burden hour estimate is 40,080. There are no costs to respondents other than their time.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	No. of respondents	No. of responses per respondent	Average Burden per response (in Hours)
State, Territorial, Tribal Health Officials/Employees	60	48	1
County Health Employees	3000	6	2
Municipal/City Health Employees	100	6	2
Total			

Dated: January 6, 2011.

Carol E. Walker,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–460 Filed 1–11–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0273]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Current Good Manufacturing Practice Quaiity System Regulation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Current Good Manufacturing Practice Quality System Regulation" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–

400B, Rockville, MD 20850, 301–796–5156, *Daniel.Gittleson@FDA.HHS.GOV.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 18, 2010 (75 FR 63834), the Agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0073. The approval expires on December 31, 2013. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: January 6, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–455 Filed 1–11–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0017]

Agency Information Collection Activities; Proposed Collection; Comment Request; Voluntary National Retail Food Regulatory Program Standards

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection provisions of the Voluntary National Retail Food Regulatory Program Standards.

DATES: Submit either electronic or written comments on the collection of information by March 14, 2011.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3793.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Voluntary National Retail Food Regulatory Program Standards (OMB Control Number 0910–0621—Extension)

The Program Standards define nine essential elements of an effective regulatory program for retail food establishments, establish basic quality control criteria for each element, and provide a means of recognition for those State, local, and tribal regulatory programs that meet the Program Standards. The program elements addressed by the Program Standards are as follows: (1) Regulatory foundation, (2) trained regulatory staff, (3) inspection program based on Hazard Analysis and Critical Control Point (HACCP) principles, (4) uniform inspection program, (5) foodborne illness and food defense preparedness and response, (6) compliance and enforcement, (7) industry and community relations, (8) program support and resources, and (9) program assessment. Each standard includes a list of records needed to document compliance with the standard (referred to in the Program Standards document as "quality records") and has one or more corresponding appendices that contain forms and worksheets to facilitate the collection of information needed to assess the retail food regulatory program against that standard. The respondents are state, local, and tribal government Agencies. Regulatory Agencies may use existing, available records or may choose to develop and use alternate forms and worksheets that capture the same information.

In the course of their normal activities, State, local, and tribal regulatory Agencies already collect and keep on file many of the records needed as quality records to document compliance with each of the Program Standards. Although the detail and format in which this information is collected and recorded may vary by jurisdiction, records that are kept as a usual and customary part of normal Agency activities include inspection records, written quality assurance procedures and records of quality assurance checks, staff training certificates and other training records, a log or database of food-related illness or injury complaints, records of investigations resulting from such complaints, an inventory of inspection equipment, records of outside audits, and records of outreach efforts (*e.g.*, meeting agendas and minutes, documentation of food safety education activities). No new recordkeeping burden is associated with these existing records, which are already a part of usual and customary program recordkeeping activities by state, local, and tribal regulatory Agencies, and which can serve as quality records under the Program Standards.

State, local, and tribal regulatory Agencies that enroll in the Program Standards and seek listing in the FDA National Registry are required to report to FDA on the completion of the following three management tasks

outlined in the Program Standards: (1) Conducting a program self assessment, (2) conducting a baseline survey of the regulated industry, and (3) obtaining an independent outside audit (verification audit). The results are reported to FDA on Form FDA 3519, "FDA National Registry Report" and Form FDA 3520, "Permission to Publish in National Registry." These forms are located in Appendix I of the Program Standards document. If a regulatory Agency follows all the recordkeeping recommendations in the individual standards and their appendices, it will have all the information needed to complete the forms.

In April 2010, the Conference for Food Protection approved changes to the Program Standards: The changes have been incorporated into a draft 2011 revision, which will be available at: *http://www.fda.gov/retailfoodprotection*. One change was to provide an extension of time for completion of the three management tasks. Another change was the inclusion of clarifying language in Standard 9 that a jurisdiction may use its inspection data to conduct its study of risk factor occurrence. Although this was always the intent in Standard 9, it was not clear to jurisdictions that this was a viable option.

FDA analyzed whether incorporation of these changes alters its estimate of the recordkeeping and reporting burdens. FDA concluded that the changes will lessen the annual recordkeeping burden estimate because the management tasks will be conducted on a less frequent basis annually. Thus, based on its experience with the Program Standards over the past 3 years, FDA has reduced its estimate of the hours per record to 94.29, from the previously estimated 157 hours per record in 2008. The reduced recordkeeping burden hour estimates are shown in table 4 of this document. FDA notes that jurisdictions that choose to analyze their inspection data per the Standard 9 criteria will enjoy a less resource intensive method for tracking risk factor trends over time. However, the Agency has not reduced its estimate of 333 hours for Standard 9 shown in table 2 of this document. The Agency will consider reducing this estimate in a future information collection request based on supporting data it expects to receive in the future from participating jurisdictions. The two noted changes had no effect on the reporting burden hour estimates shown in table 2 of this document.

Recordkeeping

FDA's recordkeeping burden estimate includes time required for a State, local, or tribal Agency to review the instructions in the Program Standards, compile information from existing sources, and create any records recommended in the Program Standards that are not already kept in the normal course of the Agency's usual and customary activities. Worksheets (Appendices) are provided to assist in this compilation. In estimating the time needed for the program self-assessment (Program Standards 1 through 8, shown in table 1 of this document), FDA considered responses from four state and three local jurisdictions that participated in an FDA Program Standards Pilot study. Table 2 of this document shows the estimated recordkeeping burden for the completion of the baseline data collection and table 3 of this document shows the estimated recordkeeping burden for the verification audit.

TABLE 1—SELF ASSESSMENT

Standard	Recordkeeping activity	Hours per record
No. 1—Regulatory Foundation	Self Assessment: (Appendix A) Completion of worksheet recording results of evaluations and comparison on worksheets[1].	16
No. 2—Trained Regulatory Staff	Self Assessment: (Appendix B–2 and B–4) [1] Completion of CFP Field Training Manual and Documentation of Successful Completion—Field Training Process; completion of summary worksheet of each employee training records[2].	19.3
No. 3—HACCP Principles	Self Assessment: (Appendix C [1]) Completion of worksheet documentation	4
No. 4—Uniform Inspection Program	Self Assessment: (Appendix D [1]) Completion of worksheet documentation of jurisdiction's quality assurance procedures[2].	19
No. 5—Foodborne Illness Investigation	Self Assessment: (Appendix E [1]) Completion of worksheet documentation	5
No. 6—Compliance Enforcement	Self Assessment: (Appendix F [1])	19
	Selection and review of 20 to 70 establishment files @ 25 minutes per file. Estimate is based on a mean number of 45. Completion of worksheet.	
No. 7—Industry & Community Relations	Self Assessment: (Appendix G[1]) Completion of worksheet	2
No. 8—Program Support and Resources	Self Assessment: (Appendix H [1]) Selection and review of establishment files	8
Total		92.3

[1] Or comparable documentation.
[2] Estimates will vary depending on number of regulated food establishments and the number of inspectors employed by the jurisdiction.

TABLE 2—BASELINE DATA COLLECTION

Standard	Recordkeeping activity	Hours per record
No. 9 Program Assessment	Baseline Data Collection (Appendices I & J) Selection and inspection of randomly selected statistical sample of 9 to 87 establishments from each of 9 facility types[1].	333

[1] Calculation based on mean sample size of 39 and average FDA inspection time for each establishment type. Estimates will vary depending on number of regulated food establishments within a jurisdiction and the number of inspectors employed by the jurisdiction.

TABLE 3—VERIFICATION AUDIT

Standard	Recordkeeping activity	Hours per record
No. 9	Verification Audit (Appendices I & J)[1]	46.15

[1] We estimate that no more than 50% of time spent to complete self assessment of all 9 Standards is spent completing verification audit worksheets. Time will be considerably less if less than 9 standards require verification audits.

FDA estimates the burden of this collection of information as follows:

TABLE 4—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

FDA worksheets[2]	Number of recordkeepers	Annual frequency per record-keeping	Total annual records	Hours per record	Total hours
Appendices A through J	500	1	500	94.29	47,145
Total					47,145

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Or comparable documentation.

FDA bases its estimates of the number of recordkeepers and the hours per record on its experience with the Program Standards over the past 3 years. FDA estimates that approximately 500 regulatory jurisdictions will participate in the Program Standards. There are approximately 3,000 jurisdictions in the United States and its territories that have retail food regulatory programs. Enrollment in the Program Standards is voluntary and, therefore, FDA does not expect all jurisdictions to participate.

FDA bases its estimate of the hours per record on the recordkeeping estimates for the management tasks of self assessment, baseline data collection, and verification audit (tables 1, 2, and 3 of this document) that enrolled jurisdictions must perform a total of 471.45 hours (92.3 + 333 + 46.15 = 471.45). As noted, based on its experience with the Program Standards over the past 3 years, FDA has reduced its estimate of the number of recordkeeping hours that enrolled jurisdictions will perform annually to 94.29, from the previously estimated 157 hours per record in 2008. FDA estimates that, annually, 500 recordkeepers will spend 94.29 hours performing the required recordkeeping for a total of 47,145 hours.

Reporting

FDA requires regulatory jurisdictions that participate in the Program Standards to submit two forms annually: Form FDA 3519, "FDA National Registry Report," and Form FDA 3520, "Permission to Publish in National Registry." Form FDA 3519 requires the name and address of the jurisdiction; completion dates for the self assessment, baseline survey (original and update), and verification audit; names of the person(s) who completed the self-assessment, verification audit, baseline survey, baseline survey update, and action plan; signature of the program manager; and date the form was completed. Form FDA 3520 requires the name of the jurisdiction, completion date of the self assessment, date of the verification audit report, name of the auditor, signature and title of the official completing the form, and date the form was completed.

The reporting burden in table 5 of this document includes only the time necessary to fill out and send the forms, as compiling the underlying information (including self-assessment reports, baseline surveys, outside audits, and supporting documentation) is accounted for under the recordkeeping estimates in table 4 of this document.

FDA estimates the reporting burden for this collection of information as follows:

TABLE 5—ESTIMATED ANNUAL REPORTING BURDEN[1]

Form FDA No.	Number of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
3519	500	1	500	0.1	50
3520	500	1	500	0.1	50
Conference for Food Protection Training Plan and Log	500	3	1,500	0.1	150
Total					250

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA bases its estimates of the number of respondents and the hours per response on its experience with the Program Standards over the past 3 years. As explained previously in this document, FDA estimates that 500 regulatory jurisdictions will enroll in the Program Standards. FDA estimates a total of 12 minutes annually for each enrolled jurisdiction to complete both forms. FDA bases its estimate on the small number of data elements on the two forms and the ease of availability of the information. FDA estimates that, annually, 500 regulatory jurisdictions

will submit one Form FDA 3519 for a total of 500 annual responses. Each submission is estimated to take 0.1 hour per response for a total of 50 hours. FDA estimates that, annually, 500 regulatory jurisdictions will submit one Form FDA 3520 for a total of 500 annual responses. Each of these submissions is estimated to take 0.1 hour per response for a total of 50 hours. FDA estimates that, annually, 500 regulatory jurisdictions will submit three requests for documentation of successful completion of staff training using the CFP Training Plan and Log for a total of 1,500 annual responses. Each submission is estimated to take 0.1 hour per response for a total of 150 hours. Thus, the total reporting burden for this information collection is 250 hours.

Dated: January 5, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–458 Filed 1–11–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0468]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Patent Term Restoration, Due Diligence Petitions, Filing, Format, and Content of Petitions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by February 11, 2011.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, *FAX:* 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0233. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Berbakos, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3792, *Elizabeth.Berbakos@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance. Patent Term Restoration, Due Diligence Petitions, Filing, Format, and Content of Petitions—(OMB Control Number 0910–0233)—Extension

FDA's patent extension activities are conducted under the authority of the Drug Price Competition and Patent Term Restoration Act of 1984 (21 U.S.C. 355(j)) and the Animal Drug and Patent Term Restoration Act of 1988 (35 U.S.C. 156). New human drug, animal drug, human biological, medical device, food additive, or color additive products regulated by the FDA must undergo FDA safety, or safety and effectiveness, review before marketing is permitted. Where the product is covered by a patent, part of the patent's term may be consumed during this review, which diminishes the value of the patent. In enacting the Drug Price Competition and Patent Term Restoration Act of 1984 and the Animal Drug and Patent Term Restoration Act of 1988, Congress sought to encourage development of new, safer, and more effective medical and food additive products. It did so by authorizing the U.S. Patent and Trademark Office (PTO) to extend the patent term by a portion of the time during which FDA's safety and effectiveness review prevented marketing of the product. The length of the patent term extension is generally limited to a maximum of 5 years, and is calculated by PTO based on a statutory formula. When a patent holder submits an application for patent term extension to PTO, PTO requests information from FDA, including the length of the regulatory review period for the patented product. If PTO concludes that the product is eligible for patent term extension, FDA publishes a notice that describes the length of the regulatory review period and the dates used to calculate that period. Interested parties may request, under § 60.24 (21 CFR 60.24), revision of the length of the regulatory review period, or may petition under § 60.30 (21 CFR 60.30) to reduce the regulatory review period by any time where marketing approval was not pursued with "due diligence."

The statute defines due diligence as "that degree of attention, continuous directed effort, and timeliness as may reasonably be expected from, and are ordinarily exercised by, a person during a regulatory review period." As provided in § 60.30(c), a due diligence petition "shall set forth sufficient facts, including dates if possible, to merit an investigation by FDA of whether the applicant acted with due diligence." Upon receipt of a due diligence petition, FDA reviews the petition and evaluates whether any change in the regulatory review period is necessary. If so, the corrected regulatory review period is published in the **Federal Register**. A due diligence petitioner not satisfied with FDA's decision regarding the petition may, under § 60.40 (21 CFR 60.40), request an informal hearing for reconsideration of the due diligence determination. Petitioners are likely to include persons or organizations having knowledge that FDA's marketing permission for that product was not actively pursued throughout the regulatory review period. The information collection for which an extension of approval is being sought is the use of the statutorily created due diligence petition.

Since 1992, 12 requests for revision of the regulatory review period have been submitted under § 60.24. For 2007, 2008, and 2009, a total of three, or one per year, have been submitted under § 60.24. Two regulatory review periods have been altered. During that same time period, two due diligence petitions were submitted to FDA under § 60.30, for an average of fewer than one per year. There have been no requests for hearings under § 60.40 regarding the decisions on such petitions; however, for purposes of this information collection approval, we are estimating that we may receive one submission annually.

In the **Federal Register** of October 5, 2010 (75 FR 61493), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received on the information collection.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR section	Number of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
60.24(a)	1	1	1	100	100
60.30	1	1	1	50	50
60.40	1	1	1	10	10
Total					160

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: January 5, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–459 Filed 1–11–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of 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 Heart, Lung, and Blood Institute Special Emphasis Panel, Loan Repayment Program Review.

Date: February 1, 2011.

Time: 8 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting.)

Contact Person: Tony L Creazzo, PhD, Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7180, Bethesda, MD 20892–7924. 301–435–0725. *creazzotl@mail.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: January 6, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–583 Filed 1–11–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; 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 materials, 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 on Alcohol Abuse and Alcoholism Initial Review Group. Epidemiology, Prevention and Behavior Research Review Subcommittee.

Date: March 29–30, 2011.

Time: 8 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: Ranga V. Srinivas, PhD, Scientific Review Officer, National Institute on Alcohol Abuse and Alcoholism, Extramural Project Review Branch, 5635 Fishers Lane, Room 2085, Bethesda, MD 20892. 301–451–2067. *srinivar@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: January 6, 2011.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–582 Filed 1–11–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; 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: Microbiology, Infectious Diseases and AIDS Initial Review Group. Microbiology and Infectious Diseases B Subcommittee.

Date: February 10–11, 2011.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Gary S. Madonna, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID, National Institutes of Health, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892. 301–496–3528. *gm12w@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 6, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–581 Filed 1–11–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; 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 materials, 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 on Alcohol Abuse and Alcoholism, Special Emphasis Panel, "Review of the Prenatal Alcohol in Sudden Infant Death Syndrome And Stillbirth (PASS) Network" (RFA HD 10–018).

Date: February 28, 2011.

Time: 8 a.m. to 6 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: Richard Rippe, PhD, Scientific Review Officer, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 5635 Fishers Lane, Room 2109, Bethesda, MD 20852. 301–443–8599. *rippera@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards., National Institutes of Health, HHS)

Dated: January 5, 2011.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–580 Filed 1–11–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Neurological Disorders and Stroke Council.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Advisory Neurological Disorders and Stroke Council, Basic and Preclinical Programs Subcommittee.

Date: February 3, 2011.

Time: 8 a.m. to 10 a.m.

Agenda: To discuss basic and preclinical programs policy.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room #7, Bethesda, MD 20892.

Contact Person: William D. Matthew, MD, Director, Office of Translational Research, NINDS, National Institutes of Health, 6001 Executive Blvd., Room 2137, Bethesda, MD 20892. 301–496–1779. *bill.matthew@nih.gov.*

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.ninds.nih.gov,* where and agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: January 5, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–579 Filed 1–11–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders And Stroke; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Neurological Disorders and Stroke Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

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 Advisory Neurological Disorders and Stroke Council Clinical Trials Subcommittee.

Date: February 2–3, 2011.

Closed: February 2, 2011, 6:30 p.m. to 7:45 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Open: February 3, 2011, 8 a.m. to 10 a.m.

Agenda: To discuss clinical trials policy.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room #10, Bethesda, MD 20892.

Contact Person: Petra Kaufmann, MD., Director, Office of Clinical Research-NINDS, National Institutes of Health, Neuroscience Center-Room 2216, 6001 Executive Blvd., Bethesda, MD 20892. 301–496–9135. *Kaufmanp2@ninds.nih.gov.*

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on

campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.ninds.nih.gov*, where and agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: January 5, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–577 Filed 1–11–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Inhibitors of the Plasmodial Surface Anion Channel as Antimalarials

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive patent license to practice the inventions embodied in U.S. Provisional Patent Application No. 61/083,000, filed July 23, 2008 [HHS Ref. No. E–202–2008/0–US–01], now expired and PCT Patent Application No. PCT/US09/50637 [HHS Ref. No. E–202–2008/0–PCT–02] filed July 15, 2009, which published as WO/2010/011537 on January 28, 2010, both applications entitled "Inhibitors of the Plasmodial Surface Anion Channel As Antimalarials," and all continuing applications and foreign counterparts to Microbiotix, Inc., having a place of business in Worcester, Massachusetts. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license territory may be "worldwide", and the field of use may be limited to "prevention and treatment of malaria in humans."

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before February 11, 2011 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, comments, and other materials relating to the contemplated exclusive license should be directed to: Kevin W. Chang, PhD, Senior Licensing and Patenting Manager, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–5018; Facsimile: (301) 402–0220; E-mail: *changke@mail.nih.gov*.

SUPPLEMENTARY INFORMATION: The subject technologies are antimalarial small molecule inhibitors of the plasmodial surface anion channel (PSAC), an essential nutrient acquisition ion channel expressed on human erythrocytes infected with malaria parasites. These inhibitors were discovered by high-throughput screening of chemical libraries and analysis of their ability to kill malaria parasites in culture. Two separate classes of inhibitors were found to work synergistically in combination against PSAC and killed malaria cultures at markedly lower concentrations than separately. These inhibitors have high affinity and specificity for PSAC and have acceptable cytotoxicity profiles.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within thirty (30) days from the date of this published notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: January 6, 2011.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2011–549 Filed 1–11–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Exercise of Authority Under Section 212(d)(3)(B)(i) of the Immigration and Nationality Act

AGENCY: Office of the Secretary, DHS.

ACTION: Notice of determination.

Authority: 8 U.S.C. 1182(d)(3)(B)(i).

Following consultations with the Secretary of State and the Attorney General, I hereby conclude, as a matter of discretion in accordance with the authority granted to me by section 212(d)(3)(B)(i) of the Immigration and Nationality Act (INA), 8 U.S.C. 1182(d)(3)(B)(i), as amended, as well as the foreign policy and national security interests deemed relevant in these consultations, that subsection 212(a)(3)(B)(iv)(VI) of the INA, 8 U.S.C. 1182(a)(3)(B)(iv)(VI), shall not apply, with respect to an alien, for the provision of material support to the All India Sikh Students Federation-Bittu Faction, provided that the alien satisfies the relevant agency authority that the alien:

(a) Is seeking a benefit or protection under the INA and has been determined to be otherwise eligible for the benefit or protection;

(b) Has undergone and passed all relevant background and security checks;

(c) Has fully disclosed, to the best of his or her knowledge, in all relevant applications and interviews with U.S. government representatives and agents, the nature and circumstances of each provision of material support and any other activity or association falling within the scope of section 212(a)(3)(B) of the INA, 8 U.S.C. 1182(a)(3)(B);

(d) Has not participated in, or knowingly provided material support to, terrorist activities that targeted noncombatant persons or U.S. interests;

(e) Poses no danger to the safety and security of the United States; and

(f) Warrants an exemption from the relevant inadmissibility provision in the totality of the circumstances.

Implementation of this determination will be made by U.S. Citizenship and Immigration Services (USCIS), in consultation with U.S. Immigration and Customs Enforcement (ICE), or by U.S. consular officers, as applicable, who shall ascertain, to their satisfaction, and in their discretion, that the particular applicant meets each of the criteria set forth above.

This exercise of authority may be revoked as a matter of discretion and

without notice at any time, with respect to any and all persons subject to it. Any determination made under this exercise of authority as set out above can inform but shall not control a decision regarding any subsequent benefit or protection application, unless such exercise of authority has been revoked.

This exercise of authority shall not be construed to prejudice, in any way, the ability of the U.S. government to commence subsequent criminal or civil proceedings in accordance with U.S. law involving any beneficiary of this exercise of authority (or any other person). This exercise of authority creates no substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

In accordance with section 212(d)(3)(B)(ii) of the INA, 8 U.S.C. 1182(d)(3)(B)(ii), a report on the aliens to whom this exercise of authority is applied, on the basis of case-by-case decisions by the U.S. Department of Homeland Security or by the U.S. Department of State, shall be provided to the specified congressional committees not later than 90 days after the end of the fiscal year.

This determination is based on an assessment related to the national security and foreign policy interests of the United States as they apply to the particular persons described herein and shall not have any application with respect to other persons or to other provisions of U.S. law.

Dated: October 18, 2010.

Janet Napolitano,

Secretary of Homeland Security.

[FR Doc. 2011–425 Filed 1–11–11; 8:45 am]

BILLING CODE 9110–9M–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Exercise of Authority Under Section 212(d)(3)(B)(i) of the Immigration and Nationality Act

AGENCY: Office of the Secretary, DHS.

ACTION: Notice of Determination.

Authority: 8 U.S.C. 1182(d)(3)(B)(i).

Following consultations with the Secretary of State and the Attorney General, I hereby conclude, as a matter of discretion in accordance with the authority granted to me by section 212(d)(3)(B)(i) of the Immigration and Nationality Act (INA), 8 U.S.C. 1182(d)(3)(B)(i), as amended, as well as the foreign policy and national security interests deemed relevant in these consultations, that section 212(a)(3)(B) of the INA, 8 U.S.C. 1182(a)(3)(B), excluding subclause (i)(II), shall not apply, with respect to an alien, for any activity or association relating to the All Burma Students' Democratic Front (ABSDF), provided that the alien satisfies the relevant agency authority that the alien:

(a) Is seeking a benefit or protection under the INA and has been determined to be otherwise eligible for the benefit or protection;

(b) Has undergone and passed all relevant background and security checks;

(c) Has fully disclosed, to the best of his or her knowledge, in all relevant applications and interviews with U.S. government representatives and agents, the nature and circumstances of activities or associations falling within the scope of section 212(a)(3)(B) of the INA, 8 U.S.C. 1182(a)(3)(B);

(d) Has not participated in, or knowingly provided material support to, terrorist activities that targeted noncombatant persons or U.S. interests;

(e) Poses no danger to the safety and security of the United States; and

(f) Warrants an exemption from the relevant inadmissibility provision in the totality of the circumstances.

Implementation of this determination will be made by U.S. Citizenship and Immigration Services (USCIS), in consultation with U.S. Immigration and Customs Enforcement (ICE), or by U.S. consular officers, as applicable, who shall ascertain, to their satisfaction, and in their discretion, that the particular applicant meets each of the criteria set forth above.

This exercise of authority may be revoked as a matter of discretion and without notice at any time, with respect to any and all persons subject to it. Any determination made under this exercise of authority as set out above can inform but shall not control a decision regarding any subsequent benefit or protection applications, unless such exercise of authority has been revoked.

This exercise of authority shall not be construed to prejudice, in any way, the ability of the U.S. government to commence subsequent criminal or civil proceedings in accordance with U.S. law involving any beneficiary of this exercise of authority (or any other person). This exercise of authority creates no substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

In accordance with section 212(d)(3)(B)(ii) of the INA, 8 U.S.C. 1182(d)(3)(B)(ii), a report on the aliens to whom this exercise of authority is applied, on the basis of case-by-case decisions by the U.S. Department of Homeland Security or by the U.S. Department of State, shall be provided to the specified congressional committees not later than 90 days after the end of the fiscal year.

This determination is based on an assessment related to the national security and foreign policy interests of the United States as they apply to the particular persons described herein and shall not have any application with respect to other persons or to other provisions of U.S. law.

Dated: December 16, 2010.

Janet Napolitano,

Secretary of Homeland Security.

[FR Doc. 2011–426 Filed 1–11–11; 8:45 am]

BILLING CODE 9110–9M–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2010–0032]

Federal Radiological Preparedness Coordinating Committee

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of public meeting.

SUMMARY: The Federal Radiological Preparedness Coordinating Committee (FRPCC) is holding a public meeting on January 20, 2011 in Arlington, VA.

DATES: The meeting will take place on January 20, 2011. The session open to the public will be from 9 a.m. EST to 10 a.m. EST. Send written statements and requests to make oral statements to the contact person listed under the **FOR FURTHER INFORMATION CONTACT** caption by close of business January 14, 2011.

ADDRESSES: The meeting will be held at the Crystal City Marriott at Reagan National Airport located at 1999 Jefferson Davis Highway, Arlington, VA 22202, in Salon E & F.

FOR FURTHER INFORMATION CONTACT: Timothy Greten, FRPCC Executive Secretary, DHS/FEMA, 1800 South Bell Street—CC847, Mail Stop 3025, Arlington, VA 20598–3025; telephone (202) 646–3907; fax (703) 305–0837; or e-mail *timothy.greten@dhs.gov.*

SUPPLEMENTARY INFORMATION: The role and functions of the Federal Radiological Preparedness Coordinating Committee (FRPCC) are described in 44

CFR 351.10(a) and 351.11(a). The FRPCC is holding a public meeting on January 20, 2011, from 9 a.m. EST to 10 a.m. EST, at the Crystal City Marriott at Reagan National Airport located at 1999 Jefferson Davis Highway, Arlington, VA 22202, in Salon E & F. Please note that the meeting may close early. This meeting is open to the public. Public meeting participants must pre-register to be admitted to the meeting. To pre-register, please provide your name and telephone number by close of business on January 14, 2011, to the individual listed under the **FOR FURTHER INFORMATION CONTACT** caption.

The tentative agenda for the FRPCC meeting includes: (1) Introductions, (2) Old Business, and (3) Radiological Emergency Preparedness (REP) Program Manual Implementation Update. The FRPCC Chair shall conduct the meeting in a way that will facilitate the orderly conduct of business. Reasonable provisions will be made, if time permits, for oral statements from the public of not more than five minutes in length. Any member of the public who wishes to make an oral statement at the meeting should send a written request for time by close of business on January 14, 2011, to the individual listed under the **FOR FURTHER INFORMATION CONTACT** caption. Any member of the public who wishes to file a written statement with the FRPCC should provide the statement by close of business on January 14, 2011, to the individual listed under the **FOR FURTHER INFORMATION CONTACT** caption.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, please write or call the individual listed under the **FOR FURTHER INFORMATION CONTACT** caption as soon as possible.

Authority: 44 CFR 351.10(a) and 351.11(a).

Timothy W. Manning,

Deputy Administrator, Protection and National Preparedness, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011–427 Filed 1–11–11; 8:45 am]

BILLING CODE 9110–21–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–R–2010–N258; 40136–1265–0000–S3]

Notice of Intent To Prepare Land Protection Plan and Associated NEPA Documents for the Proposed Everglades Headwaters National Wildlife Refuge and the Proposed Everglades Headwaters Conservation Area

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Intent.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) intends to gather information necessary to prepare a land protection plan (LPP) and associated National Environmental Policy Act (NEPA) documents pursuant to NEPA and its implementing regulations to establish the Everglades Headwaters National Wildlife Refuge (NWR) and the Everglades Headwaters Conservation Area. The Service is furnishing this notice in compliance with the National Wildlife Refuge System Administration Act of 1966, as amended, to achieve the following: advise other agencies, Tribal governments, and the public of our intentions and obtain suggestions and information on the scope of issues to include in the environmental documents. Special mailings, newspaper articles, and other media announcements will inform people of the opportunities for input throughout the planning process.

DATES: We are soliciting written comments and will hold public scoping meetings in January and February 2011.

ADDRESSES: Address comments, questions, and requests for further information to the following: Cheri M. Ehrhardt, AICP, Fish and Wildlife Service, Natural Resource Planner, P.O. Box 2683, Titusville, FL 32781–2683. You may find additional information concerning the proposed refuge and conservation area at the Service's Internet site: *http://www.fws.gov/southeast/planning/.*

FOR FURTHER INFORMATION CONTACT: Cheri M. Ehrhardt; *telephone:* 321/861–2368; *fax:* 321/861–8913; *e-mail: EvergladesHeadquartersProposal@fws.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, the Service proposes to establish a new Everglades Headwaters NWR and the Everglades Headwaters Conservation Area. The proposed refuge would consist of a core area within the upper Kissimmee River Basin, where the Service would work with willing landowners to acquire, protect, and manage up to 50,000 acres through fee title purchases, leases, conservation easements, conservation and mitigation banks, lands set aside through habitat conservation plans, and/or cooperative agreements from willing sellers. The proposed conservation area would be an area adjacent and complementary to the proposed refuge and other conservation lands within this landscape, where the Service and its partners, in cooperation with willing landowners, would protect some 100,000 acres through conservation easements, conservation and mitigation banks, lands set aside through habitat conservation plans, and/or cooperative agreements.

The proposal represents the convergence of conservation efforts of a variety of agencies and organizations and is a partnership effort amongst local, State, Federal, and Tribal governmental entities; area landowners and ranchers; and non-governmental organizations. The proposal is biologically based, targeting the cooperative conservation of an important Florida landscape, supporting various conservation plans and initiatives, and protecting, restoring, and conserving habitat for at least 88 Federal- and State-listed species and species designated by the State of Florida as Species of Greatest Conservation Need. This proposal helps address broad public concerns over the loss of wildlife, habitat, access to natural lands and waters, and working landscapes in Florida's heartland. The proposal would help preserve a part of Florida's heritage and a national treasure.

The National Wildlife Refuge System Improvement Act of 1997 outlines six priority public uses (*e.g.*, hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation) that are to be facilitated on national wildlife refuges, where compatible.

Public input into the land protection planning process is essential for the Service to understand the public's concerns within this landscape and about the proposed refuge and conservation area. Following and based on this period of public scoping, the Service will develop a LPP and associated NEPA document to propose the refuge and conservation area, including a no action alternative (*i.e.*, do not propose a refuge and conservation area) and one or more action

alternatives. The Service will then request public review and comment on the LPP and NEPA document.

Background

This area is one of the great grassland and savanna landscapes of eastern North America. Still largely rural, this area is a mosaic of seasonally wet grasslands, longleaf pine savannas, and cattle ranches that sustains one of the most important assemblages of imperiled vertebrate wildlife in the southeastern United States and a large portion of the unprotected natural habitat remaining in peninsular Florida. The proposed refuge and conservation area would help conserve and restore imperiled species habitat, protect the headwaters of the Everglades and clean water resources, create and connect a matrix of conservation lands and important wildlife corridors to help mitigate the anticipated effects of global climate change, and provide opportunities for wildlife-dependent education and recreation experiences, while also conserving the rural agricultural and ranching landscape that is so important to the existing wildlife resources of the area.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

This notice is published under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370d).

Dated: November 22, 2010.

Mark J. Musaus,

Acting Regional Director.

[FR Doc. 2011–453 Filed 1–11–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLES956000–L14200000–BJ0000]

Eastern States: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plat of survey; Virginia.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM–Eastern States office in Springfield, Virginia, 30 calendar days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management-Eastern States, 7450 Boston Boulevard, Springfield, Virginia 22153. *Attn:* Cadastral Survey.

SUPPLEMENTARY INFORMATION: This survey was requested by the Bureau of Land Management—Eastern States, Lower Potomac Field Office.

The lands surveyed are:

Fairfax County, Virginia

The plat of survey represents the dependent resurvey of a portion of Meadowood Farm, West of Belmont Boulevard, in Fairfax County, in the State of Virginia, and was accepted September 27, 2010.

We will place a copy of the plat we described in the open files. It will be available to the public as a matter of information.

If BLM receives a protest against the survey, as shown on the plat, prior to the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file the plat until the day after we have accepted or dismissed all protests and they have become final, including decisions on appeals.

Dated: January 6, 2011.

Dominica Van Koten,

Chief Cadastral Surveyor.

[FR Doc. 2011–452 Filed 1–11–11; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLES956000–L14200000–BJ0000–LXSITRST0000]

Eastern States: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plat of Survey; Michigan.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM–Eastern States office in Springfield, Virginia, 30 calendar days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management-Eastern States, 7450 Boston Boulevard, Springfield, Virginia 22153. *Attn:* Cadastral Survey.

SUPPLEMENTARY INFORMATION: This survey was requested by the Bureau of Indian Affairs.

The lands surveyed are:

Michigan Meridian, Michigan

T. 15 N., R 5 W.

The plat of survey represents the dependent resurvey of a portion of the West boundary, a portion of the subdivisional lines, and the survey of the subdivision of Section 18, of Township 15 North, Range 5 West, of the Michigan Meridian, in the State of Michigan, and was accepted September 22, 2010.

We will place a copy of the plat we described in the open files. It will be available to the public as a matter of information.

If BLM receives a protest against the survey, as shown on the plat, prior to the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file the plat until the day after we have accepted or dismissed all protests and they have become final, including decisions on appeals.

Dated: January 6, 2011.

Dominica Van Koten,

Chief Cadastral Surveyor.

[FR Doc. 2011–456 Filed 1–11–11; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NCR–NACA–1210–6447; 3086–SYM]

National Capital Memorial Advisory Commission; Notice of Public Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the National Capital Memorial Advisory Commission (the Commission) plans to meet to on Wednesday, February 16, 2011, at 11 a.m., to consult with the Dwight D. Eisenhower Memorial Commission on design concepts for the Dwight D. Eisenhower Memorial Commission.

DATES: Wednesday, February 16, 2011.

ADDRESSES: National Building Museum, Room 312, 401 F Street, NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Young, Secretary to the

Commission, by telephone at (202) 619–7097, by e-mail at *nancy_young@nps.gov*, by telefax at (202) 619–7420, or by mail at the National Capital Memorial Advisory Commission, 1100 Ohio Drive, SW., Room 220, Washington, DC 20242.

SUPPLEMENTARY INFORMATION: The purpose of the meeting will be to consult with the Dwight D. Eisenhower Memorial Commission on design concepts for the Dwight D. Eisenhower Memorial.

The meeting will begin at 11 a.m. and is open to the public. Persons who wish to file a written statement or testify at the meeting or who want further information concerning the meeting may contact Ms. Nancy Young, Secretary to the Commission. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The Commission was established by Public Law 99–652, the Commemorative Works Act (40 U.S.C. chapter 89 *et seq.*), to advise the Secretary of the Interior (the Secretary) and the Administrator, General Services Administration, (the Administrator) on policy and procedures for establishment of, and proposals to establish, commemorative works in the District of Columbia and its environs, as well as such other matters as it may deem appropriate concerning commemorative works.

The Commission examines each memorial proposal for conformance to the Commemorative Works Act, and makes recommendations to the Secretary and the Administrator and to Members and Committees of Congress. The Commission also serves as a source of information for persons seeking to establish memorials in Washington, DC, and its environs.

The members of the Commission are as follows:

Director, National Park Service
Administrator, General Services Administration
Chairman, National Capital Planning Commission
Chairman, Commission of Fine Arts
Mayor of the District of Columbia
Architect of the Capitol Chairman, American Battle Monuments Commission
Secretary of Defense

Dated: December 17, 2010.

Sgd. Peggy O'Dell,

Regional Director, National Capital Region.

[FR Doc. 2011–473 Filed 1–11–11; 8:45 am]

BILLING CODE 4312–JK–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Consistent with Section 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622(d), and 28 CFR 50.7, notice is hereby given that on January 5, 2011, the United States lodged a Consent Decree with Seven Out, LLC and BCX, Inc. ("Settling Defendants") in *United States of America* v. *Seven Out LLC, and BCX, Inc.*, Case No. 3:11–cv–0009–UAMH–MCR (U.S.D.C. M.D. Fla.), with respect to the BCX Tank Superfund Site, located at 1903 East Adams Street, Jacksonville, Duval County, Florida (the "Site").

On January 4, 2011, Plaintiff United States of America ("United States"), on behalf of the United States Environmental Protection Agency ("EPA") filed a complaint in this matter against defendants Seven Out, LLC and BCX, Inc, pursuant to CERCLA Section 107, 42 U.S.C. 9607, seeking recovery of environmental response costs incurred by EPA related to the release or threatened release or disposal of hazardous substances at or from the Site.

Financial information provided by the Settling Defendants indicated an inability to pay. However, pursuant to the Consent Decree, the United States will receive a payment from the Defendant's insurer in the amount of $350,000. Under the proposed Consent Decree, the United States, will also receive the Net Proceeds of the sale of the Site property. In exchange, the proposed Consent Decree provides Settling Defendants with a covenant not to sue and contribution protection with respect to the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States of America* v. *Seven Out LLC, and BCX, Inc.*, Case No. 3:11–cv–0009–UAMH–MCR (U.S.D.C. M.D. Fla.) (DOJ Ref. No. 90–11–3–09152). The Consent Decree may be examined at U.S. Environmental Protection Agency, Office of Regional Counsel, EPA Region 4, 61 Forsyth Street, SW., Atlanta, GA 30303–8960 (contact Stacey Haire, (404) 562–9676). During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html*. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please refer to *United States of America* v. *Seven Out LLC, and BCX, Inc.*, Case No. 3:11–cv–0009–UAMH–MCR (U.S.D.C. M.D. Fla.) (DOJ Ref. No. 90–11–3–09152), and enclose a check in the amount of $8.25 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–463 Filed 1–11–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreement Under the Comprehensive Environmental Response, Compensation, and Liability Act and Chapter 11 of the United States Bankruptcy Code

Notice is hereby given that on January 7, 2011, a proposed Settlement Agreement ("Agreement") in *In re Crucible Materials Corp.*, Case No. 09–11582 (MFW) (Bankr. D. Del.), was lodged with the United States Bankruptcy Court for the District of Delaware. The Agreement was entered into by the United States, on behalf of the United States Environmental Protection Agency ("EPA"), Crucible Materials Corporation and Crucible Development Corporation (the "Debtors"), and Honeywell International Inc. ("Honeywell"). The Agreement relates to liabilities of the Debtors under the Comprehensive Environmental

Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601 *et seq.* ("CERCLA").

The Agreement provides that EPA will have allowed general unsecured claims in the following amounts with respect to the following sites, all of which are located in Onondaga County, New York: (1) $636,000 in connection with the Lake Bottom Subsite of the Onondaga Lake Superfund Site, (2) $320,000 in connection with the Willis Avenue Subsite of the Onondaga Lake Superfund Site, (3) $27,328 in connection with the Crucible Plant Site, (4) $3,255 in connection with the Lake Pump Station Site, and (5) $12,956 in connection with the Maestri-II Site. Under the Agreement, EPA has agreed not to bring a civil action or take administrative action against the Debtors pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), and Section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6973, relating to the Lake Bottom Subsite and the Willis Avenue Subsite of the Onondaga Lake Superfund Site. EPA has also agreed not to bring a civil action or take administrative action against the Debtors pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a), relating to response costs incurred by EPA on or before September 30, 2010 in connection with the Crucible Plant Site, the Lake Pump Station Site, or the Maestri-II Site.

The Agreement also provides that the liability of the Debtors to EPA, with respect to the Butler Mine Tunnel Superfund Site, located in Pittston Township, Pennsylvania, and the consent decree entered into by one of the Debtors in connection with that site (*United States* v. *Auburn Technology, Inc.*, No. 3:CV00–1912 (M.D. Pa. Feb. 15, 2001), will not be affected by the Agreement.

Finally, the Agreement also provides that Honeywell will have an allowed general unsecured claim in the amount of $20,564,000 in connection with the Lake Bottom Subsite of the Onondaga Lake Superfund Site.

For a period of 15 days from the date of this publication, the Department of Justice will receive comments relating to the Agreement. To be considered, comments must be received by the Department of Justice by the date that this 15 days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044, and should refer to *In re Crucible Materials Corp.*, Case No. 09–11582 (MFW) (Bankr. D. Del.) and D.J. Ref. No. 90–11–3–134/3. A copy of the comments should be sent to Donald G. Frankel, Senior Counsel, Department of Justice, Environmental Enforcement Section, One Gateway Center, Suite 616, Newton, MA 02458 or e-mailed to *donald.frankel@usdoj.gov*.

The Agreement may be examined at the Office of the United States Attorney, District of Delaware, 1201 Market Street, Suite 1100, Wilmington, Delaware (contact Ellen Slights at 302–573–6277. During the public comment period, the Agreement may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html*. A copy of the Agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy of the Agreement from the Consent Decree Library, please enclose a check in the amount of $4.75 (25 cents per page reproduction cost) payable to the U.S. Treasury (if the request is by fax or email, forward a check to the Consent Decree library at the address stated above). Commenters may request an opportunity for a public meeting, in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–523 Filed 1–11–11; 8:45 am]

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DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP (OJJDP) Docket No. 1544]

Office of Juvenile Justice and Delinquency Prevention Proposed Plan for Fiscal Year 2011

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, Department of Justice.

ACTION: Notice of proposed plan for Fiscal Year 2011.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention is publishing this notice of its Proposed Plan for fiscal year (FY) 2011.

DATES: Comments must be received on or before February 28, 2011.

ADDRESSES: You may submit comments electronically or view an electronic version of this proposed rule at *http://www.regulations.gov*. You may also mail comments to Jeff Slowikowski, Acting Administrator, Office of Juvenile Justice and Delinquency Prevention, 810 Seventh Street, NW., Washington, DC 20531. To ensure proper handling, clearly reference "Proposed OJJDP Program Plan Comments" or "OJP Docket No. 1544" in the lower left hand corner of the envelope and on your correspondence.

FOR FURTHER INFORMATION CONTACT: The Office of Juvenile Justice and Delinquency Prevention at 202–307–5911. [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION:

I. Posting of Public Comments

Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov*. Such information includes personal identifying information (such as name and address) that the commenter voluntarily submits.

If you wish to submit personal identifying information (such as your name, address, *etc.*) as part of your comment, but do not wish for it to be posted online, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment. You also must locate all the personal identifying information you do not wish to be posted online in the first paragraph of your comment and identify what information you would like redacted.

If you wish to submit confidential business information as part of your comment but do not wish for it to be posted online, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You also must prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on *http://www.regulations.gov*.

Personal identifying information and confidential business information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. If you wish to inspect the agency's public docket file in person by appointment, please see the "For Further Information Contact" paragraph.

II. Preamble

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is a component of the Office of Justice Programs in the U.S. Department of Justice. Section 204 (b)(5)(A) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, 42 U.S.C. 5601 *et seq.* (JJDP Act) directs the OJJDP Administrator to publish for public comment a Proposed Plan describing the program activities that OJJDP proposes to carry out during FY 2011 under Parts D and E of Title II of the JJDP Act, codified at 42 U.S.C. 5661 *et seq.* and 5665 *et seq.* Because the Office's discretionary activities extend beyond Parts D and E, OJJDP is seeking comments on a more comprehensive listing of the Office's proposed programs. Taking into consideration comments received on this Proposed Plan, the Administrator will develop and publish in the **Federal Register** OJJDP's Final Plan describing the particular program activities that OJJDP intends to fund during FY 2011.

OJJDP acknowledges that at this time its FY 2011 appropriation is not yet final. Depending on the final appropriation, OJJDP may alter how its programs are structured and modify this Proposed Plan when it is published in final form following the public comment period.

OJJDP posts on its Web site (*http://www.ojjdp.gov*) solicitations of grant or cooperative agreement applications for competitive programs to be funded under the Final Plan. OJJDP notifies the public that these solicitations have been posted through issuance of JUVJUSTs (listserv) announcements and other methods of electronic notification. No proposals, concept papers, or other forms of application should be submitted at this time.

Department Priorities: OJJDP has structured this plan to reflect the high priority that the Administration and the Department have placed on addressing youth violence and victimization and improving protections for youth involved with the juvenile justice system. The proposals presented here represent OJJDP's current thinking on how to advance the Department's priorities during this fiscal year. These proposals also incorporate feedback from OJJDP's ongoing outreach to the field seeking ideas on program areas and the most promising approaches for those types of areas. The first section of this proposed plan contains programs that address priority areas that the Attorney General has identified.

OJJDP's Purpose: Congress established OJJDP through the JJDP Act of 1974 to help states and communities prevent and control delinquency and strengthen their juvenile justice systems and to coordinate and administer national policy in this area.

Although states, American Indian/Alaska Native (AI/AN) communities,[1] and other localities retain primary responsibility for administering juvenile justice and preventing juvenile delinquency, OJJDP supports and supplements the efforts of public and private organizations at all levels through program funding via formula, block, and discretionary grants; administration of Congressional earmark programs; research; training and technical assistance; funding of demonstration projects; and dissemination of information. OJJDP also helps administer Federal policy related to juvenile justice and delinquency prevention through its leadership role in the Coordinating Council on Juvenile Justice and Delinquency Prevention.

OJJDP's Vision: OJJDP strives to be the recognized authority and national leader dedicated to the future, safety, and well-being of children and youth in, or at risk of entering, the juvenile justice system.

OJJDP's Mission: OJJDP provides national leadership, coordination, and resources to prevent and respond to juvenile delinquency and victimization by supporting states, tribal jurisdictions, and communities in their efforts to develop and implement effective coordinated prevention and intervention programs and improve the juvenile justice system so that it protects public safety, holds offenders accountable, and provides treatment and rehabilitation services tailored to the needs of juveniles and their families.

Guiding Principles for OJJDP's National Leadership: OJJDP provides targeted funding, sponsors research and demonstration programs, offers training and technical assistance, disseminates information, and uses technology to enhance programs and collaboration in exercising its national leadership. In all of these efforts, the following four principles guide OJJDP:

1. Empower communities and engage youth and families.
2. Promote evidence-based practices.
3. Require accountability.
4. Enhance collaboration.

1. *Empower communities and engage youth and families.* Families and communities play an essential role in any effort to prevent delinquency and protect children from victimization. As Attorney General Holder has said: "family connections improve public safety, and responsible and engaged parenting improve public safety." This is especially true when fathers are involved and play a central role in their children's development. Communities must reach beyond the formal systems of justice, social services, and law enforcement to tap into the wisdom and energies of many others—including business leaders, the media, neighborhood associations, block leaders, elected officials, tribal leaders, clergy, faith-based organizations, and especially families and young people themselves—who have a stake in helping local youth become productive, law-abiding citizens. In particular, OJJDP must engage families and youth in developing solutions to delinquency and victimization. Their strengths, experiences, and aspirations provide an important perspective in developing those solutions.

To be effective, collaboration among community stakeholders must be grounded in up-to-date information. With Federal assistance that OJJDP provides, community members can partner to gather data, assess local conditions, and make decisions to ensure resources are targeted for maximum impact.

2. *Promote evidence-based practices.* To make the best use of public resources, OJJDP must identify what works in delinquency prevention and juvenile justice. OJJDP is the only Federal agency with a specific mission to develop and disseminate knowledge about what works in this field. Drawing on this knowledge, OJJDP helps communities replicate proven programs and improve their existing programs. OJJDP helps communities match program models to their specific needs and supports interventions that respond to the developmental, cultural, and gender needs of the youth and families they will serve.

3. *Require accountability.* OJJDP requires the national, state, tribal, and local entities whose programs OJJDP supports to explain how they use program resources, determine and report on how effective the programs are in alleviating the problems they are intended to address, and propose plans for remediation of performance that does not meet standards. OJJDP has established mandatory performance measures for all its programs and reports on those measures to the Office of Management and Budget. OJJDP requires its grantees and applicants to report on these performance measures, set up systems to gather the data necessary to monitor those performance

[1] In this plan, the terms "tribes" and "tribal jurisdictions" refer to both American Indian and Alaska Native communities.

measures, and use this information to continuously assess progress and fine-tune the programs.

4. *Enhance collaboration.* Juvenile justice agencies and programs are just one part of a larger set of systems that encompasses the many agencies and programs that work with at-risk youth and their families. For delinquency prevention and child protection efforts to be effective, they must be coordinated at the local, tribal, State, and Federal levels with law enforcement, social services, child welfare, public health, mental health, school, and other systems that address family strengthening and youth development. One way to achieve this coordination is to establish broad-based coalitions to create consensus on service priorities and to build support for a coordinated approach. With this consensus as a foundation, participating agencies and departments can then build mechanisms to link service providers at the program level—including procedures for sharing information across systems.

OJJDP took its guidance in the development of this proposed plan from the priorities that the Attorney General has set forth for the Department. At the same time, OJJDP drew upon its Strategic Plan for 2009–2011. The four primary goals at the heart of OJJDP's Strategic Plan echo the Attorney General's priorities. Those goals are: Prevent and respond to delinquency, strengthen the juvenile justice system, prevent and reduce the victimization of children, and create safer neighborhoods by preventing and reducing youth violence. OJJDP is currently updating its Strategic Plan.

III. OJJDP Proposed Program Plan for Fiscal Year 2011

Each year OJJDP receives formula and block grant funding as well as discretionary funds for certain program areas. Based on the 2010 appropriation and the 2011 presidential budget, OJJDP offers the following 2011 Proposed Plan for consideration and comment. Programs are organized according to the Department priorities and traditional OJJDP focus areas.

Department and OJJDP Priorities

OJJDP administers grant programs authorized by the JJDP Act of 1974, as amended. OJJDP also administers programs under other legislative authority and through partnerships with other Federal agencies. In keeping with OJJDP's mission, these programs are designed to help strengthen the juvenile justice system, prevent juvenile delinquency and violence, and protect and safeguard the nation's youth. The Obama Administration and the Attorney General have identified children's exposure to violence, gang violence, and community violence as focus areas for the Department.

The Attorney General's Initiative on Children Exposed to Violence Program: Phase II

On September 23, 2010, Attorney General Holder launched Defending Childhood, an initiative that harnesses resources from across the Department of Justice to prevent children's exposure to violence; mitigate the negative impact of that exposure; and develop knowledge and spread awareness about the issue. The Attorney General's Initiative on Children Exposed to Violence is the programmatic expression of Defending Childhood. Following an initial planning year, DOJ proposes to award supplemental funds to the original eight sites to implement activities to prevent and reduce the impact of children's exposure to violence in their homes, schools, and communities. Subsequently, DOJ will select four communities to receive substantial support through an invitation-only competition. The remaining four sites will receive supplemental funding for specific program services under DOJ guidelines. OJJDP will conduct process and outcome evaluations of the initiative.

Community-Based Violence Prevention Program

OJJDP proposes to fund eight new sites to replicate intervention programs, such as the Boston Gun Project, the Richmond Comprehensive Homicide Initiative, and the Chicago CeaseFire model, to reduce violence in targeted communities. Applicants must focus their proposed programs on the high-risk activities and behaviors of a small number of carefully selected members of the community who are likely to be involved in gun violence in the immediate future. The intervention with this target population should include improved coordination of existing resources and activities that support multiple, complementary anti-violence strategies. An additional evaluation grant (continuation) will be made to ensure data from the new sites are included in the national evaluation.

Comprehensive Community Anti-Gang Strategies and Programs

OJJDP proposes to fund community partnerships of Federal, State, and local entities implementing primary prevention, secondary prevention, gang intervention, and targeted gang enforcement anti-gang programs. Awards will support coordination of community-based anti-gang initiatives that involve law enforcement, schools, social services, faith- and community-based organizations, and businesses as essential partners. Successful applicants will demonstrate that they are implementing community-based anti-gang activities consistent with OJJDP's Comprehensive Gang Model.

Continuations

In FY 2011, OJJDP will continue to support:

- Safe Start Promising Approaches Project
- Children's Exposure to Violence Fellowship
- National Survey of Children Exposed to Violence
- Youth Gang Prevention and Intervention Program

Tribal Youth

Since 1998, Congress has appropriated funding to support programs addressing tribal youth. OJJDP administers most of its tribal initiatives through the Tribal Youth Program (TYP). These programs fund initiatives, training and technical assistance, and research and evaluation projects to improve juvenile justice systems and delinquency prevention efforts among federally recognized American Indian and Alaska Native (AI/AN) tribes. Since 1999, 10 percent of the TYP appropriation has been used for research and evaluation activities and 2 percent has been used for training and technical assistance.

U.S. Department of Justice Coordinated Tribal Assistance

In response to concerns that tribes voiced during recent public listening sessions, DOJ developed the Coordinated Tribal Assistance Solicitation (CTAS) that combines all of its existing competitive tribal solicitations into one document. The CTAS solicitation is posted on the Office of Justice Programs (OJP) Web site (*http://www.ojp.gov*). The following are the OJJDP proposed programs within the CTAS:

- *Tribal Youth Program* supports and enhances tribal efforts to prevent and control delinquency and improve their juvenile justice systems. Grantees develop and implement delinquency prevention programs, interventions for court-involved youth, improvements to their juvenile justice systems, alcohol and substance abuse prevention programs, and emotional/behavioral program services.
- *Tribal Juvenile Accountability Discretionary Grants (TJADG) Program*

receives a separate allocation through the Juvenile Accountability Block Grants Program to provide funds to federally recognized tribes to combat delinquency and improve the quality of life in AI/AN communities. OJJDP awards Tribal JADG program grants to AI/AN communities to promote accountability-based reform and strengthen the tribal juvenile justice system by addressing 1 or more of the 17 tribal JADG program purpose areas. OJJDP requires applicants to submit a plan for evaluating their projects.

• OJJDP intends to support *Tribal Youth Demonstration Programs* that address gaps in programs and services for tribal youth. Services include risk and needs assessments, educational and vocational programs, mental health services, substance abuse programs, family strengthening, recreational activities, and extended reentry aftercare to help offenders successfully reintegrate into the tribal community.

Empowering Alaska Native Youth Initiative

OJJDP intends to support Alaska Native villages as they implement programs and services to prevent and control delinquency and improve their juvenile justice systems. The villages will develop and implement delinquency prevention programs, interventions for court-involved youth, improvements to their juvenile justice systems, alcohol and substance abuse prevention programs, and emotional/behavioral program services.

Technical Assistance for Tribal Law Enforcement To Reduce Children's Exploitation Crimes

OJJDP intends to support programs that decrease children's risk of exploitation and victimization in tribal communities and expand the goals and activities of these programs to protect children. This initiative will support the development and implementation of targeted technical assistance to enhance the ability of tribal communities to respond to child exploitation, including runaway children and victims of child trafficking or commercial sexual exploitation.

Tribal Youth Gang Assessment and Demonstration Program

OJJDP proposes to fund an assessment of the gang problem in tribal communities that will inform the development of a tribal youth gang prevention and intervention demonstration program. The last attempt to accurately depict such youth gang issues was conducted nearly 10 years ago, and OJJDP feels that the issues facing tribal communities have changed significantly since that time.

Tribal Youth Field-Initiated Research and Evaluation Programs

OJJDP proposes to fund field-initiated studies to further what is understood regarding the experiences, strengths, and needs of tribal youth, their families, and communities and what works to reduce their risks for delinquency and victimization. Accordingly, OJJDP will seek applications addressing a broad range of research topics, such as the identification of risk factors for delinquent behavior and substance abuse, pathways to delinquency and desistance, and victimization experiences among tribal youth.

Tribal Youth National Mentoring Program

OJJDP proposes to support the development, maturation, and expansion of mentoring services for tribal youth on tribal reservations that are underserved due to location, shortage of mentors, emotional or behavioral challenges of the targeted population, or other situations. Grantees will assess tribal needs, develop plans, and implement and monitor mentoring activities in multiple states that have tribal reservations.

Continuation

In FY 2011, OJJDP will continue to support:

• Child Protection Programs in Tribal Communities

Juvenile Justice System Reform

OJJDP recognizes the need for states to have effective and efficient juvenile justice systems and for the Office to assist them in identifying and implementing promising and evidence-based practices. Reforming juvenile justice and improving systems across the country is a priority for OJJDP. Components of the juvenile justice system that OJJDP will focus on in 2011 include detention and corrections reform, and youth transitioning back to their communities from a detention or corrections facility.

Protection and Advocacy Juvenile Justice Monitoring Project

OJJDP proposes to support a project to provide independent monitoring in juvenile justice facilities to identify and address dangerous and unsafe conditions of confinement. In addition, this project will generate information to evaluate the effectiveness of an external oversight mechanism to improve conditions of confinement in juvenile justice facilities. The proposed project would focus on conditions and practices affecting any confined youth and specifically those affecting youth with health, physical, sensory, and cognitive or intellectual disabilities and youth with mental health and behavioral health disorders.

Second Chance Act Adult and Juvenile Offender Reentry Demonstration Projects

OJJDP, in collaboration with the Bureau of Justice Assistance, will support additional demonstration projects under the Second Chance Act Youth Offender Reentry Initiative, a comprehensive response to the increasing number of people who are released from prison, jail, and juvenile facilities each year and are returning to their communities. The goal of this initiative is to reduce the rate of recidivism for offenders released from a juvenile residential facility and increase public safety. Demonstration projects provide necessary services to youth while in confinement and following their release into the community. The initiative will focus on addressing the unique needs of girls reentering their communities.

Continuations

In FY 2011, OJJDP will continue to support;

• Juvenile Indigent Defense National Clearinghouse

• National Training and Technical Assistance Center for Youth in Custody

• Juvenile Detention Alternatives Initiative

• The National Girls Institute

Research, Evaluation, and Data Collection

OJJDP supports and promotes research, vigorous and informative evaluations of demonstration programs, and collection and analysis of statistical data. The goal of these activities is to generate credible and useful information to improve decisionmaking in the juvenile justice system. OJJDP sponsors research that has the greatest potential to improve the nation's understanding of juvenile delinquency and victimization and of ways to develop effective prevention and intervention programs to respond to it.

Assessment of Youth Gangs in Juvenile Detention and Correctional Facilities

OJJDP proposes to fund an assessment of the nature and scope of youth gangs in juvenile detention and correctional facilities. OJJDP will use information garnered from this assessment to inform the development of programs, policies, and practice to better serve incarcerated

youth and ensure safety and security for detainees and staff in residential facilities.

Child Protection Research Program

OJJDP proposes to fund field-initiated research and evaluation projects on crimes against children and juveniles, primarily on issues of exploitation and abuse. These projects will produce information that will assist Federal, State, and local law enforcement and prosecutors involved with crimes against children cases, policymakers, and professionals who care for and educate children and youth. OJJDP will consider applications proposing research in other areas that will fill a critical gap in the field's knowledge and practice.

Evaluation of Second Chance Act Juvenile Mentoring Initiative

OJJDP expects to conduct a comprehensive process and rigorous impact evaluation of the Second Chance Act Juvenile Mentoring Initiative to determine the effectiveness of combining mentoring with other reentry services for participating juvenile offenders during their confinement, through their transition back to the community, and following release. OJJDP will select a national evaluator to assess the implementation of these programs and their impact on service delivery and key outcomes for participating youth, including recidivism.

Mentoring Research Best Practices Program

OJJDP proposes to fund a program of research that seeks to enhance the understanding of mentoring as a prevention strategy for youth at risk of involvement or already involved in the juvenile justice system. While mentoring appears to be a promising intervention for youth, more evaluation work is needed to further highlight the components of a mentoring program that are most effective and how effective mentoring is as a delinquency prevention/intervention technique.

Youth Gang Research Initiative

OJJDP proposes to fund research on gangs that provides current information on the nature and scope of the gang problem in the United States, examines programs and strategies that communities have implemented to prevent and intervene in gang activity, and identifies emerging trends in gang prevention and intervention programs. Further research and examination is needed to develop a better understanding of the factors that lead to gang involvement, the nature and scope of different types of gangs, and the most effective strategies, programs, and practices to prevent and intervene with gang-involved youth.

Secondary Data Analysis Program

OJJDP intends to make several competitive awards to encourage secondary analysis of one or more of several datasets that the Office has archived to answer research questions that impact policy and practice in juvenile justice. Since the mid-1970s, OJJDP has supported a series of data collection programs to capture accurate and detailed information on youth offenders in residential placement and the facilities that hold them. OJJDP will make these datasets available to researchers.

Field-Initiated Research and Evaluation Program

OJJDP intends to support multiple grant awards for research and evaluations of programs and initiatives that focus on the juvenile justice system's response to delinquency and system improvement. The goal of the research questions posed will be to inform policy and lead to recommendations for juvenile justice system improvement.

National Juvenile Probation Census Project

OJJDP proposes to support the next round of its Census of Juveniles on Probation, which describes youth under justice supervision and the services they receive. The census provides critical data on the characteristics of youth on probation, the nature of their offenses, and how they are served. The significance of such information is evident when one considers that the number of youth on probation is roughly five times that of the population of youth in custody.

Evaluations of Girls' Delinquency Programs

OJJDP intends to support evaluations that will measure the effectiveness of delinquency prevention, intervention, and/or treatment programs to prevent and reduce girls' risk behavior and offending. Over the past two decades, the number of girls entering the juvenile justice system has dramatically increased. This trend raised a number of questions for OJJDP, including whether this reflected an increase in girls' delinquency or changes in society's responses to girls' behavior. OJJDP's Girls Study Group recently completed a review of evaluations of girls' delinquency programs and found that most programs have not been evaluated, thereby limiting knowledge about the most appropriate and effective programs for girls.

Continuations

In FY 2011, OJJDP will continue to support:

- National Juvenile Justice Evaluation Center
- National Juvenile Justice Data Analysis Program
- National Juvenile Justice Data Collection Program

Substance Abuse and Treatment

OJJDP, often in partnership with other Federal agencies and private organizations, develops programs, research, or other initiatives to address juvenile use and abuse of illegal, prescription, and nonprescription drugs and alcohol. OJJDP's substance abuse efforts include control, prevention, and treatment programs.

Best Practices for Juvenile Drug Courts and Adolescent Treatment

OJJDP proposes to fund an initiative in partnership with the Department of Health and Human Services' Center for Substance Abuse Treatment to identify best practices for merging juvenile drug courts and adolescent treatment. This initiative will also develop and implement training for juvenile drug courts on models of adolescent treatment that support the drug court.

Family Drug Court Programs

OJJDP intends to implement and enhance family drug courts that serve substance-abusing adults who are involved in the family dependency court system as a result of child abuse and neglect issues. Grantees must provide services to the children of the parents in the program as well as to the parents. The Center for Children and Family Futures will provide training and technical assistance to family drug courts.

Enforcing Underage Drinking Laws Program

The Enforcing Underage Drinking Laws (EUDL) Program supports states' efforts to reduce drinking by juveniles through its four components: Block grants to the 50 States, the 5 territories, and the District of Columbia; discretionary grants; technical assistance; and research and evaluation. Under the block grant component, each state, the District of Columbia, and the territories receive approximately $360,000 annually to support law enforcement activities, media campaigns, and coalition building. The

EUDL discretionary grant component supports several diverse initiatives to help communities develop promising approaches to address underage drinking. EUDL training and technical assistance supports communities and states in their efforts to enforce underage drinking laws. EUDL funds and Federal partnerships also support evaluations of community initiatives within the EUDL discretionary grant component.

Enforcing Underage Drinking Laws Assessment, Strategic Planning, and Implementation Initiative

OJJDP intends to support this discretionary component of the Enforcing Underage Drinking Laws program, in which states will implement an assessment and strategic planning process to develop targeted, effective activities to reduce underage access to and consumption of alcohol. Grantees will assess local conditions and design a long-term strategic plan; implement selected and approved actions of that plan; collect, analyze, and report data; and evaluate how the state responded to the recommendations, crafted its strategic plan, and implemented portions of the plan with the remaining funds.

Continuations

In FY 2011, OJJDP will continue to support:

- Juvenile Drug Court Mentoring Programs
- Juvenile Drug Court Programs

Mentoring

OJJDP supports mentoring programs for youth at risk of failing in school, dropping out of school, or becoming involved in delinquent behavior, including gang activity and substance abuse. The goals of the programs are to reduce juvenile delinquency and gang participation, improve academic performance, and reduce the school dropout rate. Mentoring funds support mentoring programs that provide general guidance and support; promote personal and social responsibility; increase participation in education; support juvenile offenders returning to their communities after confinement in a residential facility; discourage use of illegal drugs and firearms; discourage involvement in gangs, violence, and other delinquent activity; and encourage participation in community service activities. OJJDP will also sponsor several research projects that will evaluate mentoring programs or approaches and the effectiveness of specific mentoring practices.

Mentoring Commercial Child Sexual Exploitation Victim Service Agencies

OJJDP proposes to support the development and enhancement of the mentoring capacity of community organizations that provide direct services to children who are sexually exploited for commercial purposes. Community service programs that build or enhance mentoring programs for these high-risk youth and provide other appropriate support services can empower girls and boys to exit the commercial sex industry and move past their involvement with the justice system and their experiences with victimization. Such programs should be led by a local community collaborative that is designed to address local needs and use local resources.

Mentoring for Youth With Disabilities

OJJDP proposes to fund mentoring programs and strategies that support at-risk youth with disabilities to prevent them from engaging in risky behaviors such as substance abuse and criminal activity. OJJDP anticipates coordinating this initiative with the U.S. Departments of Education and Health and Human Services.

Second Chance Act Juvenile Mentoring Initiative

OJJDP intends to provide grants for mentoring and other transitional services to reintegrate juvenile offenders into their communities. The grants will be used to mentor juvenile offenders during confinement, through transition back to the community, and following release; to provide transitional services to assist them in their reintegration into the community; and to support training in offender and victims issues. The initiative's goals are to reduce recidivism among juvenile ex-offenders, enhance community safety, and enhance the capacity of local partnerships to address the needs of juvenile ex-offenders returning to their communities.

National and Multi-State Mentoring Programs

OJJDP expects to support national organizations and organizations with mentoring programs in at least five states to enhance or expand mentoring services to high-risk populations that are underserved due to location; shortage of mentors; special physical or mental challenges of the targeted population; youth with a parent in the military, including a deployed parent; or other analogous situations that the community in need of mentoring services identifies.

Strategic Enhancement to Mentoring Programs for Comprehensive Delinquency Prevention Strategies

OJJDP proposes to support the enhancement of existing mentoring programs and strategies as part of a comprehensive, integrated strategy for delinquency prevention. The enhancements include involving the parents in activities or services, providing structured activities and programs for the mentoring matches, and developing and implementing ongoing training and support for mentors.

Afterschool Arts Programs for At-Risk Youth

OJJDP proposes to fund afterschool arts programs that respond to the needs of at-risk youth who, research has shown, are at greatest risk of being a victim of a violent act or committing a crime during the afterschool hours of 3 p.m. to 7 p.m. These programs help reduce risk factors that increase the chances a youth will develop behavior problems that may lead to delinquency, crime, and violence.

Continuation

In FY 2011, OJJDP will continue to support:

- Mentoring for Safe Schools/Healthy Students Initiatives

Child Victimization

Since its inception, OJJDP has consistently strived to safeguard children from victimization by supporting research, training, and community programs that emphasize prevention and early intervention. A commitment to children's safety is written into the Office's legislative mandate, which includes the JJDP Act of 1974, the Missing Children's Assistance Act of 1984, and the Victims of Child Abuse Act of 1990. OJJDP continues to improve the responses of the justice system and related systems, increase public awareness, and promote model programs for addressing child victimization in states and communities across the country.

Children's Advocacy Centers

OJJDP intends to continue funding for programs that improve the coordinated investigation and prosecution of child abuse cases. These programs include a national subgrant program for local children's advocacy centers, a membership and accreditation program, regional children's advocacy centers, and specialized technical assistance and training programs for child abuse professionals and prosecutors. Local children's advocacy centers bring

together multidisciplinary teams of professionals to coordinate the investigation, treatment, and prosecution of child abuse cases.

Court Appointed Special Advocates Programs

OJJDP intends to continue funding for Court Appointed Special Advocates (CASA) programs that provide children in the foster care system or at risk of entering the dependency system with high-quality, timely, effective, and sensitive representation before the court. CASA programs train and support volunteers who advocate for the best interests of the child in dependency proceedings. OJJDP funds a national CASA training and technical assistance provider and a national membership and accreditation organization to support state and local CASA organizations' efforts to recruit volunteer advocates, including minority volunteers, and to provide training and technical assistance to these organizations and to stakeholders in the child welfare system.

Prevention of Hate Crimes Against Youth

OJJDP proposes to fund a program for individual public and private schools, school consortia, or school systems that would use an evidence-based approach to address youth hate crimes. It will target middle and high school students, teachers, administrators, and school resource officers in those schools. The program will educate students about the harm of prejudice and instill an appreciation of diversity, train teachers and school administrators to identify and respond to incidents of hate crime, and train law enforcement officers (school resource officers) in the investigation and prosecution of incidents of hate crimes involving youth.

Child Exploitation

The increasing number of children and teens using the Internet, the proliferation of child pornography, and the increasing number of sexual predators who use the Internet and other electronic media to prey on children present both a significant threat to the health and safety of young people and a formidable challenge for law enforcement. OJJDP took the lead early on in addressing this problem. More than a decade ago, the Office established the Internet Crimes Against Children Task Force program.

Internet Crimes Against Children Program

OJJDP expects to continue funding to support the operations of the 61 Internet Crimes Against Children (ICAC) task forces. The ICAC Task Force program helps state and local law enforcement agencies develop an effective response to sexual predators who prey upon juveniles via the Internet and other electronic devices and child pornography cases. This program encompasses forensic and investigative components, training and technical assistance, victim services, and community education.

ICAC Commercial Child Sexual Exploitation

OJJDP intends to support select law enforcement agencies in their development of strategies to protect children from commercial sexual exploitation. Grantees will improve training and coordination activities, develop policies and procedures to identify child victims of commercial sexual exploitation, investigate and prosecute cases against adults who sexually exploit children for commercial purposes, and provide essential services to victims, including cases where technology is used to facilitate the exploitation of the victim.

ICAC Deconfliction System

OJJDP proposes to fund an ICAC Deconfliction System (IDS) to allow OJJDP-credentialed users, including Federal, State, local, and tribal agencies and ICAC task forces investigating and prosecuting child exploitation to contribute and access data for use in resolving case conflicts. A governmental agency or a credentialed law enforcement agency will host the system. Also, IDS will permit the real-time analysis of data to facilitate identification of targets and to estimate the size of the law enforcement effort to address these crimes.

In addition, OJJDP intends to support related ICAC activities and programs, including:

- Designing and implementing the 2011 ICAC-Project Safe Childhood National Training Conference.
- Research on Internet and other technology-facilitated crimes against children.
- Training for ICAC officers, prosecutors, judges, and other stakeholders.
- Technical assistance to support implementation of the ICAC program.

Continuation

In FY 2011, OJJDP will continue to support:

- Missing and Exploited Children Training and Technical Assistance Program

Juvenile Justice System Improvement

OJJDP works to improve the effectiveness and efficiency of the juvenile justice system. A major component of these efforts is the provision of training and technical assistance (TTA) resources that address the needs of juvenile justice practitioners and support state and local efforts to build capacity and expand the use of evidence-based practices.

Training and technical assistance is the planning, development, delivery, and evaluation of activities to achieve specific learning objectives, resolve problems, and foster the application of innovative approaches to juvenile delinquency and victimization. OJJDP has developed a network of providers to deliver targeted training and technical assistance to policymakers and practitioners.

National Delinquency Court Improvement Program

OJJDP intends to support a training and technical assistance program to improve the operations of the nation's juvenile delinquency courts. Under this program, OJJDP will produce guidelines to improve delinquency courts and standards for the representation of juveniles in status offense and delinquency cases, promote alternatives to detention and evidence-based programs to prevent and intervene in delinquency, produce guidelines for dealing with youth under the jurisdiction of several systems, and promote adherence to the core principles of the JJDP Act of 1974, as amended.

National Gang Center

OJJDP proposes to fund, in partnership with the Bureau of Justice Assistance, a National Gang Center to provide training and technical assistance to law enforcement agencies and communities on gang prevention and intervention programs and strategies. The National Gang Center will also administer the annual National Youth Gang Survey and disseminate current research and practice on gang prevention, intervention, and suppression strategies and programs.

Model Programs Guide

OJJDP expects to fund a program to maintain and expand the databases that make up OJJDP's Model Programs Guide. The award recipient will actively identify, review, and assess new programs; add new programs that meet

the evaluation criteria, their descriptions, and performance indicators; and develop, maintain, and expand subject-specific databases including, but not limited to, the disproportionate minority contact and deinstitutionalization of status offenders best practices databases. Moreover, OJJDP is looking to improve technical capacity, expand and refine the database, and, generally, assure ease, speed, and precision in searching the database.

National Training and Technical Assistance Center for Truancy Prevention and Intervention

OJJDP intends to fund a National Training and Technical Assistance Center for Truancy Prevention and Intervention. The center will disseminate information regarding what works to prevent and intervene with school truancy and dropout problems and promote the use of evidence-based practices through training, technical assistance, and resources.

State Relations and Assistance Division's Training and Technical Assistance Program

OJJDP proposes to award a cooperative agreement to an organization that will provide training and technical assistance to national, state, and local-level grantees and non-grantees. OJJDP expects that this training and technical assistance will assist them in planning, establishing, operating, coordinating, and evaluating delinquency prevention and juvenile justice systems improvement projects. Additionally, the selected organization will coordinate the State Relations and Assistance Division's national training conferences.

Continuations

In FY 2011, OJJDP will continue to support:

- Child Abuse Training for Judicial and Court Personnel
- Engaging Law Enforcement To Reduce Juvenile Crime, Victimization, and Delinquency
- State Advisory Group Training and Technical Assistance Project

Fellowships

OJJDP's fellowship program is designed to enhance the Office's efforts to develop and improve innovative programs that serve children, youth, and families. A secondary goal is to provide practitioners an opportunity to work closely with career and political Federal staff, contractors, grantees, and other public and private organizations in Washington, DC, and across the country. The fellow will provide direct operational assistance to OJJDP staff through assessment and capacity building, design and development of innovative initiatives and training programs, resource development, research and evaluation, policy development, and outreach and awareness. The fellow will also develop articles for publication and other products on specific topics.

Concentration of Federal Efforts Fellowship

OJJDP proposes to fund a fellow in the Concentration of Federal Efforts program for 2 years to strengthen the Office's cross-agency partnership efforts. Currently, OJJDP staff and leadership participate in dozens of interagency efforts. The fellow will build on related ongoing work of other Federal agencies, develop new cross-agency partnerships and initiatives, identify and assess opportunities for cross-agency partnerships, and track the impact of existing partnership efforts.

Visiting Research Fellowship Program

OJJDP proposes funding for a visiting research fellowship to identify evidence-based programs to facilitate the development or enhancement of new and innovative programs. Through the program, fellows will investigate new approaches to address existing problems in juvenile justice in conjunction with OJJDP's ongoing program of research into juvenile justice and delinquency prevention issues.

General

Support for Conferences on Juvenile Justice

OJJDP plans to support conferences that address juvenile justice and the prevention of delinquency. This support would provide community prevention leaders, treatment professionals, juvenile justice officials, researchers, and practitioners with information on best practices and research-based models to support state, local government, and community efforts to prevent juvenile delinquency.

Dated: January 7, 2011.

Jeff Slowikowski,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 2011–548 Filed 1–11–11; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Hearing on Definition of "Fiduciary"

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of hearing and extension of comment period.

SUMMARY: Notice is hereby given that the Employee Benefits Security Administration will hold a hearing to consider issues attendant to adopting a regulation defining when a person is considered to be a "fiduciary" by reason of giving investment advice to an employee benefit plan or to a plan's participants and beneficiaries.

DATES: The hearing will be held on March 1, 2011 and, if necessary, March 2, 2011, beginning at 9 a.m., EST.

ADDRESSES: The hearing will be held at the U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Fred Wong or Luisa Grillo-Chope, Office of Regulations and Interpretations, Employee Benefits Security Administration, U.S. Department of Labor, at (202) 693–8500. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Employee Benefits Security Administration (EBSA) published in the **Federal Register** on October 22, 2010, (75 FR 65263), a proposed rule under the Employee Retirement Income Security Act (ERISA) that, upon adoption, more broadly defines the circumstances under which a person is considered a "fiduciary" by reason of giving investment advice to an employee benefit plan or to a plan's participants.[1] The proposal amends a thirty-five year old rule that may inappropriately limit the types of investment advice relationships that give rise to fiduciary duties on the part of the investment advisor. The current regulation significantly narrows the plain language of section 3(21)(A)(ii) of the Employee Retirement Income Security Act (ERISA) by creating a 5-part test that must be satisfied in order for a person to be considered a fiduciary by reason of giving investment advice. The changes set forth in the proposed regulation are intended to more closely conform such determinations to the statutory definition, as well as take into account the significant changes in both

[1] The rule would also apply for purposes of the prohibited transaction provisions contained in section 4975 of the Internal Revenue Code.

the financial services industry and the expectations of plan officials and participants who receive investment advice. For a full discussion of the changes, see the October 22, 2010 **Federal Register** at page 65263, *et seq.* or visit EBSA's Web site at *http://www.dol.gov/ebsa/*, see Proposed Rules.

Since publication in the **Federal Register**, there has been considerable interest expressed in the proposed rule and its impact on various segments of the employee benefits and financial communities, as well as individuals and organizations involved with appraisals of employer stock and other assets. In order to ensure that all issues are fully considered and interested persons have sufficient time to share their views on this important regulation, EBSA has announced that it is extending the period for submitting comments on the proposal until February 3, 2011, two weeks after the close of the January 20, 2011 comment period provided in the proposed regulation, and it is holding a public hearing, the subject of this notice.

The hearing will be held on March 1, 2011 and, if necessary, March 2, 2011, beginning at 9 a.m. EST, in the plaza auditorium of the U.S. Department of Labor, Frances Perkins Building, at 200 Constitution Avenue, NW., Washington, DC 20210.

Persons interested in presenting testimony and answering questions at this public hearing must submit, by 3:30 p.m. EST, February 9, 2011, a written request to testify and an outline of the issues they would like to address at the hearing. It should be noted that, while reasonable efforts will be made to accommodate requests to testify on the specified issues, it may be necessary to limit the number of those testifying in order to provide an opportunity for the presentation of the broadest array of points of view during the period allotted for the hearing. Any persons not afforded an opportunity to testify will still have an opportunity to submit a written statement on the specified issues for the record. The hearing will be open to the general public.

To facilitate the receipt and processing of requests to testify, EBSA encourages interested persons to submit their requests and outlines by e-mail to *e-ORI@dol.gov*, subject line: Fiduciary Definition Hearing. Persons submitting requests and outlines electronically should not submit paper copies. Persons submitting requests and outlines on paper should send or deliver their requests and outlines to the Office of Regulations and Interpretations, Employee Benefits Security Administration, Attn: Fiduciary Definition Hearing, Room N–5655, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. All requests and outlines submitted will be available to the public, without charge, online at *http://www.dol.gov/ebsa* and at the Public Disclosure Room, N–1513, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

EBSA will prepare an agenda indicating the order of presentation of oral comments and testimony. In the absence of special circumstances, each presenter will be allotted ten (10) minutes in which to complete his or her presentation. Those individuals who make oral comments and present testimony at the hearing should be prepared to answer questions regarding their information and/or comments. Those requesting to testify also should be prepared to participate as part of a panel, to the extent possible, organized by issue.

Any individuals with disabilities who may need special accommodations should notify the Agency when contacted concerning the scheduling of their testimony.

Information about the agenda will be posted on *http://www.dol.gov/ebsa* no later than February 17, 2011. Individuals planning to attend the hearing should provide contact information by e-mail to *e-ORI@dol.gov* and arrive at least 15 minutes prior to the start of the hearing to expedite entrance into the building.

Notice of Public Hearing

Notice is hereby given that a public hearing will be held on March 1, 2011 and, if necessary, March 2, 2011, concerning issues related to the proposed rule defining when a person will be considered a "fiduciary" by reason of giving investment advice to a plan or to the plan's participants. The hearing will be held beginning at 9 a.m. EST in the plaza auditorium of the U.S. Department of Labor, Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice of Extension of Comment Period

Notice is hereby given that the period for submitting comments on the proposed Definition of the Term "Fiduciary," published in the **Federal Register** on October 22, 2010 (75 FR 65263), is being extended until February 3, 2011.

To facilitate the receipt and processing of comment letters, the EBSA encourages interested persons to submit their comments electronically by e-mail to *e-ORI@dol.gov*, subject line: Definition of Fiduciary Proposed Rule or by using the Federal eRulemaking portal at *http://www.regulations.gov*. Persons submitting comments electronically are encouraged not to submit paper copies. Persons interested in submitting paper copies should send or deliver their comments to the Office of Regulations and Interpretations, Employee Benefits Security Administration, Attn: Definition of Fiduciary Proposed Rule, Room N–5655, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. All comments will be available to the public, without charge, online at *http://www.regulations.gov* and *http://www.dol.gov/ebsa* and at the Public Disclosure Room, N–1513, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. *Warning:* Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines. Comments may be submitted anonymously.

Signed at Washington, DC, this 6th day of January, 2011.

Phyllis C. Borzi,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 2011–483 Filed 1–11–11; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities: Revision and Extension of a Currently Approved Information Collection; Comment Request

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (Department), as part of its continuing effort to reduce paperwork and respondent burden, is conducting a pre-clearance consultation to provide the general public and Federal agencies with an opportunity to comment on a continuing collection of information in accordance with the Paperwork Reduction Act (PRA) of 1995 [44 U.S.C. 3506(c)(2)(A)]. This consultation is undertaken to ensure that requested data can be provided in the desired

format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the extension of the approval for information collection involving the ETA Form 9089, OMB Control No. 1205–0451, Application for Permanent Employment Certification, which expires on June 30, 2011. A copy of the information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before March 14, 2011.

ADDRESSES: William L. Carlson, Administrator, Office of Foreign Labor Certification, U.S. Department of Labor, Room C4312, 200 Constitution Ave., NW., Washington, DC 20210. Phone (202) 693–3010 (This is not a toll-free number), fax (202) 693–2768, or e-mail at *ETA.OFLC.Forms@dol.gov* subject line: ETA Form 9089.

SUPPLEMENTARY INFORMATION:

I. Background

The information collection is required by sections 203(b)(3) and 212(a)(5)(A) of the Immigration and Nationality Act (INA) (8 U.S.C. 1153(b)(3) and 1182(a)(5)(A)). The Department and the Department of Homeland Security (DHS) have promulgated regulations to implement the INA. Specifically for this collection, the regulations at 20 CFR 656 and 8 CFR 204.5 (the regulations) are applicable. Section 212(a)(5)(A) of the INA mandates the Secretary of Labor to certify that any alien seeking to enter the United States for the purpose of performing skilled or unskilled labor is not adversely affecting wages and working conditions of U.S. workers similarly employed and that there are not sufficient U.S. workers able, willing, and qualified to perform such skilled or unskilled labor. Before any employer may request any skilled or unskilled alien labor, it must submit a request for certification to the Secretary of Labor containing the elements prescribed by the INA and the regulations. The regulations require employers to document their recruitment efforts and to substantiate the reasons no U.S. workers were hired.

II. Review Focus

The Department is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submissions of responses.

III. Current Actions

In order to meet its statutory responsibilities under the INA, the Department needs to extend an existing collection of information pertaining to employers seeking to apply for labor certifications to allow them to bring foreign workers to the United States on a permanent basis. The information collection consists of the current form used by all employers and a modified form, previously approved by OMB, but never implemented by the Department. Once the Department completes building the electronic filing and case management system required to support the modified form, the current form will become obsolete and the modified form will become operative. At this time, the Department is not requesting that any substantive changes be made to either form.

In the past the respondents have been for-profit businesses, not-for-profit institutions, individuals, households, and farms. On rare occasions the respondents have been local, state, tribal governments, or the federal government.

The Secretary of Labor uses the collected information to determine if allowing an alien to enter the United States for the purpose of performing skilled or unskilled labor will adversely affect wages and working conditions of U.S. workers similarly employed and whether or not there were sufficient U.S. workers able, willing, and qualified to perform such skilled or unskilled labor at the time of the application.

Type of Review: Revision and Extension of Currently Approved Information Collection.

Agency: Employment and Training Administration.

Title: Application for Permanent Employment Certification.

OMB Control No.: 1205–0451.

Agency Number(s): Form ETA 9089.

Recordkeeping: On occasion.

Affected Public: Businesses or other for-profits and not-for profits, individuals or households, farms, and Federal, State, Local or Tribal Governments.

Total Respondents: 94,600.

Estimated Total Burden Hours: 223,331.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintaining): $750,000.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Dated: January 5, 2011.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2011–471 Filed 1–11–11; 8:45 am]

BILLING CODE 4510–FP–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–74,714]

Quest Diagnostics, Inc. Information Technology Help Desk Services Including On-Site Leased Workers From Modis, West Norriton, PA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 6, 2010, applicable to workers of Quest Diagnostics, Inc., Information Technology Help Desk Services, West Norriton, Pennsylvania. The workers are engaged in activities related to the supply of internal information technology (IT) support services. The notice will be published soon in the **Federal Register.**

At the request of a petitioner, the Department reviewed the certification for workers of the subject firm. The company reports that workers leased from Modis were employed on-site at the West Norriton, Pennsylvania location of Quest Diagnostics, Inc., Information Technology Help Desk

Services. The Department has determined that these workers were sufficiently under the operational control of Quest Diagnostics, Inc., Information Technology Help Desk Services to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Modis working on-site at the West Norriton, Pennsylvania location of Quest Diagnostics, Inc., Information Technology Help Desk Services.

The amended notice applicable to TA–W–74,714 is hereby issued as follows:

All workers of Quest Diagnostics, Inc., Information Technology Help Desk Services, including on-site leased workers from Modis, West Norriton, Pennsylvania, who became totally or partially separated from employment on or after October 3, 2009, through December 6, 2012, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC this 22nd day of December 2010.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–516 Filed 1–11–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,764]

International Paper Company, Franklin Pulp & Paper Mill, Including On-Site Leased Workers From Railserve, Franklin, VA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 17, 2009, applicable to workers and former workers of International Paper Company, Franklin Pulp & Paper Mill, Franklin, Virginia. The notice was published in the **Federal Register** on February 16, 2010 (75 FR 7034). The workers are engaged in the production of uncoated freesheet paper and coated paperboard. On April 27, 2010, the Department issued an amended certification to include on-site leased workers of Railserve. The notice of amended certification was published in the **Federal Register** on May 12, 2010 (75 FR 26794).

Following a careful a review of new and previously-submitted information, the Department determined that the subject worker group meet the criteria of Section 222(a) of the Trade Act of 1974, as amended. The Department has determined that increased imports of articles like or directly competitive with those produced by the subject firm contributed importantly to sales and/or production decline and worker separations at the Franklin, Virginia facility.

The amended notice applicable to TA–W–72,764 is hereby issued as follows:

All workers International Paper Company, Franklin Pulp & Paper Mill, including on-site leased workers from Railserve, Franklin, Virginia, who became totally or partially separated from employment on or after November 3, 2008, through December 17, 2011, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 22nd day of December 2010.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–514 Filed 1–11–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,287; TA–W–71,287A; TA–W–71,287B; TA–W–71,287C]

Masco Builder Cabinet Group Including On-Site Leased Workers From Reserves Network, Jackson, OH; Masco Builder Cabinet Group, Waverly, OH; Masco Builder Cabinet Group, Seal Township, OH; Masco Builder Cabinet Group, Seaman, OH; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 16, 2009, applicable to workers and former workers of Masco Building Cabinet Group, Jackson, Ohio. The workers are engaged in activity related to the production of cabinets and cabinet frames used for the residential housing market. The Notice was published soon in the **Federal Register** on December 11, 2009 (74 FR 65798).

The Department has received information that the appropriate subdivision includes three affiliated production facilities that produce cabinets for the residential housing market.

Based on these findings, the Department is amending this certification to include workers of Masco Building Cabinet Group in Waverly, Ohio, Seal Township, Ohio, and Seaman, Ohio.

The amended notice applicable to TA–W–71,287 is hereby issued as follows:

All workers of Masco Building Cabinet Group, including on-site leased workers from Reserves Network, Jackson, Ohio (TA–W–71,287), Masco Building Cabinet Group, Waverly, Ohio (TA–W–71,287A), Masco Building Cabinet Group, Seal Township, Ohio (TA–W–71,287B), and Masco Building Cabinet Group, Seaman, Ohio (TA–W–71,287C), who became totally or partially separated from employment on or after June 11, 2008, through October 16, 2011, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 22nd day of December 2010.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–512 Filed 1–11–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of *December 20, 2010 through December 23, 2010.*

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) Imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) Imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) Imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) The increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) There has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) The shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in public agencies and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) A significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

(3) The acquisition of services contributed importantly to such workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(c) of the Act must be met.

(1) A significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) Either-

(A) the workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) The workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) An affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) An affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) An affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) The petition is filed during the 1-year period beginning on the date on which—

(A) A summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the Federal Register under section 202(f)(3); or

(B) Notice of an affirmative determination described in subparagraph (1) is published in the Federal Register; and

(3) The workers have become totally or partially separated from the workers' firm within—

(A) The 1-year period described in paragraph (2); or

(B) Notwithstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
74,296	MeadWestvaco Corporation, Consumer and Office Products Division, Pro-Tel People.	Sidney, NY	June 21, 2009.
74,877	Cresent Inc., Leased Workers from HR Sources and Solutions	Niota, TN	November 11, 2009.
74,884	Mid-South Electronics, Inc., Mid-South Industries, Inc.	Gadsden, AL	November 12, 2009.

TA–W No.	Subject firm	Location	Impact date
74,884A	Leased Workers from Elwood Staffing, Manpower, and Personnel Staffing, Inc., Working On-Site at Mid-South Electronics, Inc.	Gadsden, AL	November 12, 2009.
74,990	Everbrite, Division of Everbrite, LLC; Leased Workers from Olsten Staffing Services.	La Crosse, WI	December 13, 2009.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
74,617	Tekni-Plex Colorite Swan, TPI Acquisition Subsidiary, Inc.; Leased Workers Temp Accounting Support, etc.	Bucyrus, OH	September 12, 2009.
74,699	Laboratory Corporation of America Holdings, Information Technology Division 23; Leased Workers Xenia Corporation, etc.	Richardson, TX	September 29, 2009.
74,861	Nay et al., Inc., Baby Hay, The Big Citizen Division	Los Angeles, CA	October 9, 2009.
74,942	Harris Corporation, Broadcast Communications Division; Test and Measurement Product Line.	Pottstown, PA	November 29, 2009.

Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

TA–W No.	Subject firm	Location	Impact date
74,973	Wearbest Sil-Tex Mills, Ltd	New York, NY.	
74,977	Wearbest Sil-Tex Mills, Ltd	Garfield, NJ.	

The following determinations terminating investigations were issued because the petitioning groups of workers are covered by active certifications. Consequently, further investigation in these cases would serve no purpose since the petitioning group of workers cannot be covered by more than one certification at a time.

TA–W No.	Subject firm	Location	Impact date
74,511	Masco Builder Cabinet Group	Waverly, OH.	
74,511A	Masco Builder Cabinet Group	Seal Township, OH.	
74,511B	Masco Builder Cabinet Group	Seaman, OH.	

I hereby certify that the aforementioned determinations were issued during the period of *December 20, 2010 through December 23, 2010.* Copies of these determinations may be requested under the Freedom of Information Act. Requests may be submitted by fax, courier services, or mail to FOIA Disclosure Officer, Office of Trade Adjustment Assistance (ETA), U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 or *tofoiarequest@dol.gov.* These determinations also are available on the Department's Web site at *http://www.doleta.gov/tradeact* under the searchable listing of determinations.

Dated: December 29, 2010.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–510 Filed 1–11–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,047; TA–W–71,047A]

UAW–Chrysler National Training Center Technology Training Joint Programs Staff, Detroit, MI; UAW–Chrysler Technical Training Center Technology Training Joint Programs Staff, Warren, MI; Notice of Revised Determination on Reconsideration

By application dated June 15, 2010, the State of Michigan Trade Adjustment Assistance (TAA) Coordinator requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of UAW–Chrysler National Training Center, Detroit,

Michigan (subject firm) to apply for TAA. The negative determination, issued on April 13, 2010, was based on the Department's finding that a significant number or proportion of the workers the subject firm was not totally or partially separated or threatened with such separation. The Department's Notice was published in the **Federal Register** on May 20, 2010 (75 FR 28301). The Department's Notice of Affirmative Determination Regarding Application for Reconsideration was signed on June 21, 2010, and was published in the **Federal Register** on July 1, 2010 (75 FR 38126).

To support the request for reconsideration, the petitioner supplied additional information regarding the number of workers separated from the subject firm and regarding the eligibility of workers at several Chrysler plants to apply for TAA.

Based on the information received during the reconsideration investigation, the Department has determined that the subject worker group consists of the training facility in Detroit, Michigan and a training facility in Warren, Michigan; the subject worker group are members of the Technology Training Joint Programs Staff; and the criteria set forth in Section 222(a) has been met.

During the reconsideration investigation, the Department confirmed that the proportion of Technology Training Joint Programs Staff separated at each subject facility met the statutory threshold.

During the reconsideration investigation, the Department sought detailed information about the types of training provided at the subject facilities. The information revealed that the technical training provided (such as applied industrial technology, industrial automation, industrial maintenance, and welding) supported the production of articles manufactured at several Chrysler plants whose workers have been certified eligible to apply for TAA based on increased imports of articles like or directly competitive with the articles that were produced directly using the training services supplied by the subject facilities.

Conclusion

After careful review of the additional facts obtained on reconsideration, I determine that workers of UAW–Chrysler National Training Center, Technology Training Joint Programs Staff, Detroit, Michigan, and Warren, Michigan, who are engaged in employment related to the supply of technical training services, meet the worker group certification criteria under Section 222(a) of the Act, 19 U.S.C. 2272(a). In accordance with Section 223 of the Act, 19 U.S.C. 2273, I make the following certification:

All workers of UAW–Chrysler National Training Center, Technology Training Joint Programs Staff, Detroit, Michigan (TA–W–71,047), and Warren, Michigan (TA–W–71,047A), who became totally or partially separated from employment on or after May 27, 2008, through two years from the date of this certification, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 22nd day of December 2010.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–511 Filed 1–11–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,608]

Xilinx, Inc. Including On-Site Leased Workers of TEKsystems, Albuquerque, NM; Notice of Revised Determination on Reconsideration

On January 25, 2010, the Department issued a Notice of Affirmative Determination Regarding Application for Reconsideration applicable to workers and former workers of Xilinx, Inc., Albuquerque, New Mexico (the subject firm). The Department's Notice was published in the **Federal Register** on February 16, 2010 (75 FR 7031). The workers are engaged in employment related to the supply of internally-used engineering services.

In the request for reconsideration, workers alleged that the subject firm has shifted abroad the supply of services like and directly competitive with the internal-use engineering services supplied by the Albuquerque, New Mexico facility and provided documentation in support of the allegation. The new documentation included a February 29, 2008, advertisement for a product engineer\senior product engineer for one offshore location of Xilinx, Inc.; and a job advertisement dated May 19, 2009, for integrated circuit test engineers and test equipment engineers for a Product and Test Engineering Department of a foreign Xilinx facility.

During the reconsideration investigation, the Department carefully reviewed the new information and previously-submitted information.

Based on the information obtained during the reconsideration investigation, the Department determines that a significant proportion or number of workers at the subject firm was totally or partially separated, or threatened with such separation; that the subject firm shifted to a foreign country the supply of services like or directly competitive with the engineering services supplied by workers at the subject firm; and that the subject worker group includes on-site leased workers of TEKsystems.

Conclusion

After careful review of the additional facts obtained on reconsideration, I determine that workers of Xilinx, Inc., including on-site leased workers of TEKsystems, Albuquerque, New Mexico, who are engaged in employment related to the supply of internal-use engineering services, meet the worker group certification criteria under Section 222(a) of the Act, 19 U.S.C. 2272(a). In accordance with Section 223 of the Act, 19 U.S.C. 2273, I make the following certification:

All workers of Xilinx, Inc., including on-site leased workers of TEKsystems, Albuquerque, New Mexico, who became totally or partially separated from employment on or after July 7, 2008, through two years from the date of this certification, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 7th day of October 2010.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–513 Filed 1–11–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–74,057]

Specialty Minerals, Inc., Franklin, VA; Notice of Revised Determination on Reconsideration

On June 18, 2010, the Department issued a negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers of Specialty Minerals, Inc., Franklin, Virginia (the subject firm). The Notice was published

in the **Federal Register** on July 1, 2010 (75 FR 38142). On August 19, 2010, the Department issued a Notice of Negative Determination Regarding Application for Reconsideration applicable to workers of the subject firm. The Notice was published in the **Federal Register** on August 30, 2010 (75 FR 52989). The workers produced precipitated calcium carbonate used in the production of paper.

In the request for reconsideration, the company official asserted that workers of the subject firm are eligible to apply for TAA as adversely affected secondary workers because the precipitated calcium carbonate was supplied to a "paper mill" that employed a worker group eligible to apply for TAA and identified the firm covered by TA–W–72,764 as the primary firm.

Section 222(c) of the Trade Act of 1974, as amended, states that adversely affected secondary workers must be employed by a firm that is a supplier to a firm that employed a worker group who are adversely affected primary workers.

The Notice of Negative Determination Regarding Application for Reconsideration was based on the Department's determination that, because the workers covered by TA–W–72,764 are certified eligible to apply for TAA as adversely affected secondary workers, the criteria of Section 222(c) was not met.

Subsequent to the issuance of the Notice of Negative Determination Regarding Application for Reconsideration, the Department issued an amended certification of TA–W–72,764 which identified those workers as eligible to apply for TAA as primary workers instead of adversely affected secondary workers.

After careful review of previously-submitted information and the additional facts obtained on reconsideration, I determine that workers of Specialty Minerals, Inc., Franklin, Virginia, who are engaged in employment related to the production of precipitated calcium carbonate used in the production of paper, meet the worker group certification criteria under Section 222(c) of the Act, 19 U.S.C. 2272(c). In accordance with Section 223 of the Act, 19 U.S.C. 2273, I make the following certification:

All workers of Specialty Minerals, Inc., Franklin, Virginia, who became totally or partially separated from employment on or after May 6, 2009, through two years from the date of this revised certification, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 22nd day of December 2010.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–515 Filed 1–11–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection, Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the "Consumer Price Index Commodities and Services Survey." A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **Addresses** section of this notice on or before March 14, 2011.

ADDRESSES: Send comments to Nora Kincaid, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212. Written comments also may be transmitted by fax to 202–691–5111 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Nora Kincaid, BLS Clearance Officer, 202–691–7628 (this is not a toll free number). (*See* **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

Under the direction of the Secretary of Labor, the Bureau of Labor Statistics (BLS) is directed by law to collect, collate, and report full and complete statistics on the conditions of labor and the products and distribution of the products of the same; the Consumer Price Index (CPI) is one of these statistics. The collection of data from a wide spectrum of retail establishments and government agencies is essential for the timely and accurate calculation of the Commodities and Services (C&S) component of the CPI.

The CPI is the only index compiled by the U.S. Government that is designed to measure changes in the purchasing power of the urban consumer's dollar. The CPI is a measure of the average change in prices over time paid by urban consumers for a market basket of goods and services. The CPI is used most widely as a measure of inflation, and serves as an indicator of the effectiveness of government economic policy. It is also used as a deflator of other economic series, that is, to adjust other series for price changes and to translate these series into inflation-free dollars. Examples include retail sales, hourly and weekly earnings, and components of the Gross Domestic Product. A third major use of the CPI is to adjust income payments. Almost 2 million workers are covered by collective bargaining contracts, which provide for increases in wage rates based on increases in the CPI. Similarly, ten States have laws that link the adjustment in State minimum wage to the changes in the CPI. In addition to private sector workers whose wages or pensions are adjusted according to changes in the CPI, the index also affects the income of nearly 75 million persons, largely as a result of statutory action: About 48 million social security beneficiaries; about 4.1 million retired military and Federal Civil Service employees and survivors, and about 22.4 million food stamp recipients. Changes in the CPI also affect the 26.7 million children who eat lunch at school. Under the National School Lunch Act and Child Nutrition Act, national average payments for those lunches and breakfasts are adjusted annually by the Secretary of Agriculture on the basis of the change in the CPI series, "Food away from Home." Since 1985, the CPI has been used to adjust the Federal income tax structure to prevent inflation-induced tax rate increases.

II. Current Action

Office of Management and Budget clearance is being sought for the Consumer Price Index Commodities and Services Survey. The continuation of the collection of prices for the CPI is

essential since the CPI is the nation's chief source of information on retail price changes. If the information on C&S prices were not collected, Federal fiscal and monetary policies would be hampered due to the lack of information on price changes in a major sector of the U.S. economy, and estimates of the real value of the Gross National Product could not be made. The consequences to both the Federal and private sectors would be far reaching and would have serious repercussions on Federal government policy and institutions.

The CPI is seeking to expand the number of CPI commodity and services prices quotes collected by 50 percent beginning in 2011 to improve the accuracy of each published index and the overall quality of the CPI data.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Type of Review: Revision of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Consumer Price Index Commodities and Services Survey.

OMB Number: 1220–0039.

Affected Public: Business or other for-profit; not for profit institutions; and State, Local or Tribal Government.

	Total respondents	Frequency	Total responses	Average time per response	Estimated total burden
Pricing	54,461	8.8531	482,149	0.33	159,109
Outlet Rotation	20,809	1	20,809	1.0	20,809
Total	75,270	n/a	502,958	n/a	179,918

Total Burden Cost (capital/startup): $0.0.

Total Burden Cost (operating/maintenance): $0.0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 7th day of January 2011.

Kimberley Hill,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 2011–474 Filed 1–11–11; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (11–003)]

NASA Advisory Council; Education and Public Outreach 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 Education and Public Outreach Committee of the NASA Advisory Council (NAC).

DATES: Tuesday, February 8, 2011, 9 a.m. to 5 p.m., Local Time.

ADDRESSES: NASA Headquarters, 300 E Street, SW., Washington, DC 20546, The Glennan Conference Center, Room 1Q39.

FOR FURTHER INFORMATION CONTACT: This meeting will also take place telephonically and via WebEx. Any interested person should contact Ms. Erika G. Vick, Executive Secretary for the Education and Public Outreach Committee, National Aeronautics and Space Administration, Washington, DC, at *Erika.vick-1@nasa.gov*, no later than 4 p.m., local time, February 4, 2011, to get further information about participating via teleconference and/or WebEx.

SUPPLEMENTARY INFORMATION: The agenda for the meeting includes the following topics:

- Strategic Review Team Status
- Education Design Team Status
- Committee Recommendations Status
- Joint Recommendation with the NAC Commercial Space Committee
- Committee Work Plan
- Action Item Status

The meeting will be open to the public up to the seating capacity of the room. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will need to show a valid picture identification such as a driver's license to enter the NASA Headquarters building (West Lobby—Visitor Control Center), and must state that they are attending the NASA Advisory Council Education and Public Outreach Committee meeting in the Glennan Conference Center, Room 1Q39, before receiving an access badge. All non-U.S citizens must fax a copy of their passport, and print or type 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), and place and date of entry into the U.S., fax to Erika Vick, NASA Advisory Council Education and Public Outreach Committee Executive Secretary, FAX: (202) 358–4332, by no later than Monday, January 31, 2011. To expedite admittance, attendees with U.S. citizenship can provide identifying information 3 working days in advance by contacting Erika Vick via e-mail at *erika.vick-1@nasa.gov* or by telephone at (202) 358–2209 or fax: (202) 358–4332.

Dated: January 6, 2011.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2011–424 Filed 1–11–11; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act; Meeting Notice; Matter To Be Deleted From the Agenda of a Previously Announced Agency Meeting

TIME AND DATE: 11:30 a.m., Thursday, January 13, 2011.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

1. MATTER TO BE DELETED: Insurance Appeals. Closed pursuant to exemptions (4), (6) and (7).

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, Telephone: 703–518–6304.

Mary Rupp,

Board Secretary.

[FR Doc. 2011–596 Filed 1–10–11; 11:15 am]

BILLING CODE P

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval To Renew an Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request clearance of this collection. In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting that OMB approve clearance of this collection for no longer than three years.

DATES: Written comments on this notice must be received by March 14, 2011 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

For Additional Information or Comments: Contact Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 292–7556; or send e-mail to *splimpto@nsf.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday. You also may obtain a copy of the data collection instrument and instructions from Ms. Plimpton.

SUPPLEMENTARY INFORMATION:

Title of Collection: NSF Surveys to Measure Customer Service Satisfaction.

OMB Number: 3145–0157.

Expiration Date of Approval: August 31, 2011.

Type of Request: Intent to seek approval to renew an information collection.

Abstract:

Proposed Project: On September 11, 1993, President Clinton issued Executive Order 12862, "Setting Customer Service Standards," which calls for Federal agencies to provide service that matches or exceeds the best service available in the private sector. Section 1(b) of that order requires agencies to "survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services." The National Science Foundation (NSF) has an ongoing need to collect information from its customer community (primarily individuals and organizations engaged in science and engineering research and education) about the quality and kind of services it provides and use that information to help improve agency operations and services.

Estimate of Burden: The burden on the public will change according to the needs of each individual customer satisfaction survey; however, each survey is estimated to take approximately 30 minutes per response.

Respondents: Will vary among individuals or households; business or other for-profit; not-for-profit institutions; farms; federal government; state, local or tribal governments.

Estimated Number of Responses per Survey: This will vary by survey.

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: January 7, 2011.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2011–524 Filed 1–11–11; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Assumption Buster Workshop: Defense-in-Depth is a Smart Investment for Cyber Security

AGENCY: The National Coordination Office (NCO) for the Networking and Information Technology Research and Development (NITRD) Program.

ACTION: Call for participation.

FOR FURTHER INFORMATION CONTACT: *assumptionbusters@nitrd.gov*

DATES: *Workshop:* March 22, 2011; *Deadline:* February 10, 2011. Apply via e-mail to *assumptionbusters@nitrd.gov*.

SUMMARY: The NCO, on behalf of the Special Cyber Operations Research and Engineering (SCORE) Committee, an interagency working group that coordinates cyber security research activities in support of national security systems, is seeking expert participants in a day-long workshop on the pros and cons of the defense-in-depth strategy for cyber security. The workshop will be held March 22, 2011 in the Washington DC area. Applications will be accepted until 5 p.m. EST February 10, 2011. Accepted participants will be notified by February 28, 2011.

SUPPLEMENTARY INFORMATION: *Overview:* This notice is issued by the National Coordination Office for the Networking and Information Technology Research and Development (NITRD) Program on behalf of the SCORE Committee.

Background: There is a strong and often repeated call for research to provide novel cyber security solutions. The rhetoric of this call is to elicit new solutions that are radically different from existing solutions. Continuing research that achieves only incremental improvements is a losing proposition. We are lagging behind and need technological leaps to get, and keep, ahead of adversaries who are themselves rapidly improving attack technology. To answer this call, we must examine the key assumptions that underlie current security architectures. Challenging those assumptions both opens up the possibilities for novel solutions that are rooted in a fundamentally different understanding of the problem and provides an even stronger basis for moving forward on those assumptions that are well-founded. The SCORE Committee is conducting a series of four

workshops to begin the assumption buster process. The assumptions that underlie this series are that cyber space is an adversarial domain, that the adversary is tenacious, clever, and capable, and that re-examining cyber security solutions in the context of these assumptions will result in key insights that will lead to the novel solutions we desperately need. To ensure that our discussion has the requisite adversarial flavor, we are inviting researchers who develop solutions of the type under discussion, and researchers who exploit these solutions. The goal is to engage in robust debate of topics generally believed to be true to determine to what extent that claim is warranted. The adversarial nature of these debates is meant to ensure the threat environment is reflected in the discussion in order to elicit innovative research concepts that will have a greater chance of having a sustained positive impact on our cyber security posture.

The first topic to be explored in this series is "Defense-in-depth is a Smart Investment." The workshop on this topic will be held in the Washington, DC area on March 22, 2011.

Assertion: "Defense-in-Depth is a smart investment because it provides an environment in which we can safely and securely conduct computing functions and achieve mission success."

This assertion reflects a commonly held viewpoint that Defense-in-Depth is a smart investment for achieving perfect safety/security in computing. To analyze this statement we must look at it from two perspectives. First, we need to determine how the cyber security community developed confidence in Defense-in-Depth despite mounting evidence of its limitations, and second, we must look at the mechanisms in place to evaluate the cost/benefit of implementing Defense-in-Depth that layers mechanisms of uncertain effectiveness.

Initially developed by the military for perimeter protection, Defense-in-Depth was adopted by the National Security Agency (NSA) for main-frame computer system protection. The Defense-in-Depth strategy was designed to provide multiple layers of security mechanisms focusing on people, technology, and operations (including physical security) in order to achieve robust information assurance (IA).[1] Today's highly networked computing environments, however, have significantly changed the cyber security calculus, and Defense-in-Depth has struggled to keep pace with change. Over time, it became evident that Defense-in-depth failed to provide information assurance against all but the most elementary threats, in the process putting at risk mission essential functions. The 2009 White House Cyberspace Policy Review called for "changes in technology" to protect cyberspace, and the 2010 DHS DOD MOA sought to "aid in preventing, detecting, mitigating and recovering from the effects of an attack", suggesting a new dimension for Defense-in-depth along the lifecycle of an attack.

Defense-in-Depth can provide robust information assurance properties if implemented along multiple dimensions; however, we must consider whether layers of sometimes ineffective defense tools may result in *delaying* potential compromise without providing any guarantee that compromise will be completely *prevented.* In today's highly networked world, Defense-in-Depth may best be viewed as a practical way to defer harm rather than a means to security. It is worth considering whether the Defense-in-Depth strategy tends to contribute more to network *survivability* than it does to mission assurance.

Intrusions into DoD and other information systems over the past decade provide ample evidence that Defense-in-Depth provides no significant barrier to sophisticated, motivated, and determined adversaries given those adversaries can structure their attacks to pass through all the layers of defensive measures. In the meantime, kinetic Defense-in-Depth of weapons platforms (such as aircraft) evolved into a life-cycle strategy of stealth (prevent), radars (detect), jammers and chaff (mitigate), fire extinguishers (survive) and parachutes (recover), a strategy that could provide value in the cyber domain.

How to Apply

If you would like to participate in this workshop, please submit (1) a resume or curriculum vita of no more than two pages which highlights your expertise in this area and (2) a one-page paper stating your opinion of the assertion and outlining your key thoughts on the topic. The workshop will accommodate no more than 60 participants, so these brief documents need to make a compelling case for your participation. Applications should be submitted to *assumptionbusters@nitrd.gov* no later than 5 p.m. EST on February 10, 2011.

Selection and Notification

The SCORE committee will select an expert group that reflects a broad range of opinions on the assertion. Accepted participants will be notified by e-mail no later than February 28, 2011. We cannot guarantee that we will contact individuals who are not selected, though we will attempt to do so unless the volume of responses is overwhelming.

Submitted by the National Science Foundation for the National Coordination Office (NCO) for Networking and Information Technology Research and Development (NITRD) on January 7, 2011.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2011–522 Filed 1–11–11; 8:45 am]

BILLING CODE 7555–01–P

[1] *Defense-in-depth: A practical strategy for achieving Information Assurance in today's highly networked environments.*

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17a–4; SEC File No. 270–198; OMB Control No. 3235–0279.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information provided for in Rule 17a–4 (17 CFR 240.17a–4), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17a–4 requires exchange members, brokers and dealers ("broker-dealers") to preserve for prescribed periods of time certain records required to be made by Rule 17a–3. In addition, Rule 17a–4 requires the preservation of records required to be made by other Commission rules and other kinds of records which firms make or receive in the ordinary course of business. These include, but are not limited to, bank statements, cancelled checks, bills receivable and payable, originals of communications, and descriptions of various transactions. Rule 17a–4 also permits broker-dealers to employ, under certain conditions, electronic storage media to maintain records required to be maintained under Rules 17a–3 and 17a–4.

There are approximately 5,057 active, registered broker-dealers. The staff estimates that the average amount of time necessary to preserve the books and records as required by Rule 17a–4 is 254 hours per broker-dealer per year. Thus the staff estimates that the total compliance burden for 5,057 respondents is 1,284,478 hours.

The staff believes that compliance personnel would be charged with ensuring compliance with Commission regulation, including Rule 17a–4. The staff estimates that the hourly salary of a Compliance Clerk is $67 per hour.[1] Based upon these numbers, the total cost of compliance for 5,057 respondents is the dollar cost of approximately $86.1 million (1,284,478 yearly hours × $67). The total burden hour decrease of 468,122 is due to a decrease in the number of respondents from 6,900 to 5,057.

Based on conversations with members of the securities industry and based on the Commission's experience in the area, the staff estimates that the average broker-dealer spends approximately $5,000 each year to store documents required to be retained under Rule 17a–4. Costs include the cost of physical space, computer hardware and software, etc., which vary widely depending on the size of the broker-dealer and the type of storage media employed. The Commission estimates that the annual reporting and record-keeping cost burden is $25,285,000. This cost is calculated by the number of active, registered broker-dealers multiplied by the reporting and record-keeping cost for each respondent (5,057 active, registered broker-dealers × $5,000).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

[1] This figure is based on SIFMA's Office Salaries in the Securities Industry 2010, modified by Commission staff to account for an 1800-hour work-year multiplied by 2.93 to account for bonuses, firm size, employee benefits, and overhead.

Please direct your written comments to: Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: *PRA_Mailbox@sec.gov*.

Dated: January 6, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–476 Filed 1–11–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 15c3–3; SEC File No. 270–087; OMB Control No. 3235–0078.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") is soliciting comments on the existing collection of information provided for in Rule 15c3–3 (17 CFR 240.15c3–3), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 15c3–3 requires that a broker-dealer that holds customer securities obtain and maintain possession and control of fully-paid and excess margin securities they hold for customers. In addition, the Rule requires that a broker-dealer that holds customer funds make either a weekly or monthly computation to determine whether certain customer funds need to be segregated in a special reserve bank account for the exclusive benefit of the firm's customers. It also requires that a broker-dealer maintain a written notification from each bank where a Special Reserve Bank Account is held acknowledging that all assets in the account are for the exclusive benefit of the broker-dealer's customers, and to provide written notification to the Commission (and its designated examining authority) under certain, specified circumstances. Finally, paragraph (o) of Rule 15c3–3, which applies only to broker-dealers that sell securities futures products ("SFP") to customers, requires that such broker-dealers provide certain notifications to customers, and to make a record of any changes of account type.

There are approximately 279 broker-dealers fully subject to the Rule (*i.e.*, broker-dealers that cannot claim any of the exemptions enumerated at paragraph (k)), of which approximately 13 make daily, 210 make weekly, and 56 make monthly, reserve computations. On average, each of these respondents require approximately 2.5 hours to complete a computation. Accordingly, Commission staff estimates that the resulting burden totals 36,780 hours annually ((2.5 hours × 240 computations × 13 respondents that calculate daily) + (2.5 hours × 52 computations × 210 respondents that calculate weekly) + (2.5 hours × 12 computations × 56 respondents that calculate monthly)).

A broker-dealer required to maintain the Special Reserve Bank Account prescribed by Rule 15c3–3 must obtain and retain a written notification from each bank in which it has a Special Reserve Bank Account to evidence bank's acknowledgement that assets deposited in the Account are being held by the bank for the exclusive benefit of the broker-dealer's customers. As stated previously, 279 broker-dealers are presently fully-subject to Rule 15c3–3. In addition, 120 broker-dealers operate in accordance with the exemption provided in paragraph (k)(2)(i) which also requires that a broker-dealer maintain a Special Reserve Bank Account. The staff estimates that of the total broker-dealers that must comply with this rule, only 25%, or 100 ((279 + 120) × .25) must obtain 1 new letter each year (either because the broker-dealer changed the type of business it does and became subject to either paragraph (e)(3) or (k)(2)(i) or simply because the broker-dealer established a new Special Reserve Bank Account). The staff estimates that it would take a broker-dealer approximately 1 hour to obtain this written notification from a bank regarding a Special Reserve Bank Account because the language in these letters is largely standardized. Therefore, Commission staff estimates that broker-dealers will spend approximately 100 hours each year to obtain these written notifications.

In addition, a broker-dealer must immediately notify the Commission and its designated examining authority if it fails to make a required deposit to its Special Reserve Bank Account. Commission staff estimates that broker-dealers file approximately 33 such notices per year. Broker-dealers would require approximately 30 minutes, on average, to file such a notice. Therefore, Commission staff estimates that broker-dealers would spend a total of

approximately 17 hours each year to comply with the notice requirement of Rule 15c3–3.

Finally, a broker-dealer that effects transactions in SFPs for customers also will have paperwork burdens associated with the requirement in paragraph (o) of Rule 15c3–3 to make a record of each change in account type.[1] More specifically, a broker-dealer that changes the type of account in which a customer's SFPs are held must create a record of each change in account type that includes the name of the customer, the account number, the date the broker-dealer received the customer's request to change the account type, and the date the change in account type took place. As of December 31, 2009, broker-dealers that were also registered as futures commission merchants reported that they maintained 35,242,468 customer accounts. The staff estimates that 8% of these customers may engage in SFP transactions (35,242,468 accounts × 8% = 2,819,397). Further, the staff estimates that 20% per year may change account type. Thus, broker-dealers may be required to create this record for up to 563,879 accounts (2,819,397 accounts × 20%). The staff believes that it will take approximately 3 minutes to create each record.[2] Thus, the total annual burden associated with creating a record of change of account type will be 28,194 hours (563,879 accounts × (3min/60min)).

Consequently, the staff estimates that the total annual burden hours associated with Rule 15c3–3 would be approximately 65,091 hours (36,780 hours + 100 hours + 17 hours + 28,194 hours).

The staff estimates that a broker-dealer would have (1) A financial reporting manager make a record of its reserve computations and send the required notices to the Commission, (2) an attorney obtain the written notifications from banks where it has a Special Reserve Bank Account to evidence bank's acknowledgement that assets deposited in the Account are being held by the bank for the exclusive benefit of customers, and (3) a compliance clerk create a record of each change in account type. The staff estimates that the hourly rate of a financial reporting manager and an attorney are $290 and $354, respectively,[3] and the hourly rate of a compliance clerk is $67.[4] Consequently, the total cost of the above-described hour burden would be $12,595,528.[5]

In addition, a broker-dealer that effects transactions in SFPs for customers also will have an annualized cost burden associated with the requirements in paragraph (o) of Rule 15c3–3 to (1) provide each customer that plans to effect SFP transactions with a disclosure document containing certain information,[6] and (2) send each SFP customer notification of any change of account type.[7] Approximately 8% of the accounts held by broker-dealers that are also registered as FCMs, or 2,819,397 accounts, may engage in SFP transactions. The staff estimates that the cost of printing and sending each disclosure document will be approximately $.15 per document sent.[8] Thus, the staff estimates that the cost of printing and sending disclosure documents would be approximately $422,910 (2,819,397 accounts × $.15). In addition, approximately 563,879 accounts (2,819,397 accounts × 20%) may change account type per year requiring that broker-dealers provide notification to those customers. The staff estimates that the cost of sending this notification to customers will be about $84,582 (563,879 accounts × $.15). Consequently, the staff estimates that the total annual cost associated with Rule 15c3–3 would be $507,492 ($422,910 + $84,583).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to: Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: *PRA_Mailbox@sec.gov*.

Dated: January 6, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–475 Filed 1–11–11; 8:45 am]

BILLING CODE 8011–01–P

[1] 17 CFR 240.15c3–3(o)(3)(i).

[2] In fact, the staff believes that most firms will have this process automated. To the extent that no person need be involved in the generation of this record, the burden will be very minimal.

[3] The $290/hour figure for a financial reporting manager and the $354/hour figure for an attorney are derived from SIFMA's Management & Professional Salaries in the Securities Industry 2010, as modified by Commission staff to account for an 1,800 hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[4] The $67/hour figure for a compliance clerk is derived from SIFMA's Office Salaries in the Securities Industry 2010, modified by Commission staff to account for an 1,800 hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead.

[5] (((36,780 hours + 17 hours) × $290/hour) + (100 hours × $354/hour) + (28,194 hours × $67/hour)).

[6] 17 CFR 240.15c3–3(o)(2).

[7] 17 CFR 240.15c3–3(o)(3)(ii).

[8] Based on past conversations with industry representatives regarding other rule changes as adjusted to account for inflation and increased postage costs.

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 482; SEC File No. 270–508; OMB Control No. 3235–0565.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget ("OMB") for extension and approval.

Like most issuers of securities, when an investment company[1] ("fund") offers its shares to the public, its promotional efforts become subject to the advertising restrictions of the Securities Act of 1933, (15 U.S.C. 77) (the "Securities Act"). In recognition of the particular problems faced by funds that continually offer securities and wish to advertise their securities, the Commission has previously adopted advertising safe harbor rules. The most important of these is rule 482 (17 CFR 230.482) under the Securities Act, which, under certain circumstances, permits funds to advertise investment performance data, as well as other information. Rule 482 advertisements are deemed to be "prospectuses" under Section 10(b) of the Securities Act.[2]

[1] "Investment company" refers to both investment companies registered under the Investment Company Act of 1940 and business development companies.

[2] 15 U.S.C. 77j(b).

Rule 482 contains certain requirements regarding the disclosure that funds are required to provide in qualifying advertisements. These requirements are intended to encourage the provision to investors of information that is balanced and informative, particularly in the area of investment performance. For example, a fund is required to include disclosure advising investors to consider the fund's investment objectives, risks, charges and expenses, and highlighting the availability of the fund's prospectus. In addition, rule 482 advertisements that include performance data of open-end funds or insurance company separate accounts offering variable annuity contracts are required to include certain standardized performance information, information about any sales loads or other nonrecurring fees, and a legend warning that past performance does not guarantee future results. Such funds including performance information in rule 482 advertisements are also required to make available to investors month-end performance figures via website disclosure or by a toll-free telephone number, and to disclose the availability of the month-end performance data in the advertisement. The rule also sets forth requirements regarding the prominence of certain disclosures, requirements regarding advertisements that make tax representations, requirements regarding advertisements used prior to the effectiveness of the fund's registration statement, requirements regarding the timeliness of performance data, and certain required disclosures by money market funds.

Rule 482 advertisements must be filed with the Commission or, in the alternative, Financial Industry Regulatory Authority ("FINRA").[3] This information collection differs from many other federal information collections that are primarily for the use and benefit of the collecting agency.

As discussed above, rule 482 contains requirements that are intended to encourage the provision to investors of information that is balanced and informative, particularly in the area of investment performance. The Commission is concerned that in the absence of such provisions fund investors may be misled by deceptive rule 482 performance advertisements and may rely on less-than-adequate information when determining in which funds they should invest their money. As a result, the Commission believes it is beneficial for funds to provide investors with balanced information in fund advertisements in order to allow investors to make better-informed decisions.

The Commission estimates that 58,368 responses are filed annually pursuant to rule 482 by 3,540 investment companies offering approximately 16,225 portfolios, or approximately 3.6 responses per portfolio annually. Respondents consist of all the investment companies that take advantage of the safe harbor offered by the rule for their advertisements. The burden associated with rule 482 is presently estimated to be 5.16 hours per response. The hourly burden is therefore approximately 301,179 hours (58,368 responses × 5.16 hours per response).

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

Cost burden is the cost of services purchased to comply with rule 482, such as for the services of computer programmers, outside counsel, financial printers, and advertising agencies. The Commission attributes no cost burden to rule 482.

The provision of information under rule 482 is necessary to obtain the benefits of the safe harbor offered by the rule. The information provided is not kept confidential. 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.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: January 5, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–449 Filed 1–11–11; 8:45 am]

BILLING CODE 8011–01–P

[3] See rule 24b–3 under the Investment Company Act (17 CFR 270.24b–3), which provides that any sales material, including rule 482 advertisements, shall be deemed filed with the Commission for purposes of Section 24(b) of the Investment Company Act upon filing with FINRA.

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 206(4)–6; SEC File No. 270–513; OMB Control No. 3235–0571.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (the "Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget ("OMB") for extension and approval.

The title for the collection of information is "Rule 206(4)–6" under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*) ("Advisers Act") and the collection has been approved under OMB Control No. 3235–0571. The Commission adopted rule 206(4)–6 (17 CFR 275.206(4)–6), the proxy voting rule, to address an investment adviser's fiduciary obligation to clients who have given the adviser authority to vote their securities. Under the rule, an investment adviser that exercises voting authority over client securities is required to: (i) Adopt and implement policies and procedures that are reasonably designed to ensure that the adviser votes securities in the best interest of clients, including procedures to address any material conflict that may arise between the interest of the adviser and the client; (ii) disclose to clients how they may obtain information on how the adviser has voted with respect to their securities; and (iii) describe to clients the adviser's proxy voting policies and procedures and, on request, furnish a copy of the policies and procedures to the requesting client. The rule is designed to assure that advisers that vote proxies for their clients vote those proxies in their clients' best interest and provide

clients with information about how their proxies were voted.

Rule 206(4)–6 contains "collection of information" requirements within the meaning of the Paperwork Reduction Act. The respondents are investment advisers registered with the Commission that vote proxies with respect to clients' securities. Advisory clients of these investment advisers use the information required by the rule to assess investment advisers' proxy voting policies and procedures and to monitor the advisers' performance of their proxy voting activities. The information also is used by the Commission staff in its examination and oversight program. Without the information collected under the rules, advisory clients would not have information they need to assess the adviser's services and monitor the adviser's handling of their accounts, and the Commission would be less efficient and effective in its programs.

The estimated number of investment advisers subject to the collection of information requirements under the rule is 10,207. It is estimated that each of these advisers is required to spend on average 10 hours annually documenting its proxy voting procedures under the requirements of the rule, for a total burden of 102,070 hours. We further estimate that on average, approximately 121 clients of each adviser would request copies of the underlying policies and procedures. We estimate that it would take these advisers 0.1 hours per client to deliver copies of the policies and procedures, for a total burden of 123,505 hours. Accordingly, we estimate that rule 206(4)–6 results in an annual aggregate burden of collection for SEC-registered investment advisers of a total of 225,575 hours.

Written comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burdens of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: January 5, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–448 Filed 1–11–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 18f–1 and Form N–18f–1; SEC File No. 270–187; OMB Control No. 3235–0211.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 18f–1 (17 CFR 270.18f–1) enables a registered open-end management investment company ("fund") that may redeem its securities in-kind, by making a one-time election, to commit to make cash redemptions pursuant to certain requirements without violating section 18(f) of the Investment Company Act of 1940 (15 U.S.C. 80a–18(f)). A fund relying on the rule must file Form N–18F–1 (17 CFR 274.51) to notify the Commission of this election. The Commission staff estimates that approximately 52 funds file Form N–18F–1 annually, and that each response takes approximately one hour. Based on these estimates, the total annual burden hours associated with the rule is estimated to be 52 hours.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: January 5, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–447 Filed 1–11–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63650; File No. SR–NASDAQ–2011–001]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by The NASDAQ Stock Market, LLC to Establish a $5 Strike Price Program

January 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 January 3, 2011, The NASDAQ Stock Market LLC ("NASDAQ" or "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 NASDAQ Stock Market LLC proposes to amend Chapter IV, Securities Traded on NOM, Section 6, Series of Open Contracts Open for Trading, to allow the Exchange to list

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

and trade series in intervals of $5 or greater where the strike price is more than $200 in up to five option classes on individual stocks.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaq.cchwallstreet.com*, at the principal office of the Exchange, on the Commission's Web site at *http://www.sec.gov*, 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. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to modify Chapter IV, Section 6(d) to allow the Exchange to list and trade series in intervals of $5 or greater where the strike price is more than $200 in up to five option classes on individual stocks ("$5 Strike Price Program") to provide investors and traders additional opportunities and strategies to hedge high priced securities.

Currently, Chapter IV, Section 6(d)(iii) permits strike price intervals of $10 or greater where the strike price is greater than $200.[3] The Exchange is proposing to add the proposed $5 Strike Price Program as an exception to the $10 or greater program language in Chapter IV, Section 6. The proposal would allow the Exchange to list series in intervals of $5 or greater where the strike price is more than $200 in up to five option classes on individual stocks. The Exchange specifically proposes to create a new section (d)(v) to Chapter IV, Section 6 which would state, "Nasdaq may list series in intervals of $5 or greater where the strike price is more than $200 in up to five (5) option classes on individual stocks."

The Exchange believes the $5 Strike Price Program would offer investors a greater selection of strike prices at a lower cost. For example, if an investor wanted to purchase an option with an expiration of approximately one month, a $5 strike interval could offer a wider choice of strike prices, which may result in reduced outlays in order to purchase the option. By way of illustration, using Google, Inc. ("GOOG") as an example, if GOOG would trade at $610[4] with approximately one month remaining until expiration, the front month (one month remaining) at-the-money call option (the 610 strike) would trade at approximately $17.50 and the next highest available strike (the 620 strike) would trade at approximately $13.00. By offering a 615 strike an investor would be able to trade a GOOG front month call option at approximately $15.25, thus providing an additional choice at a different price point.

Similarly, if an investor wanted to hedge exposure to an underlying stock position by selling call options, the investor may choose an option term with two months remaining until expiration. An additional $5 strike interval could offer additional and varying yields to the investor. For example if Apple, Inc. ("AAPL") would trade at $310[5] with approximately two months remaining until expiration, the second month (two months remaining) at-the-money call option (the 310 strike) would trade at approximately $14.50 and the next highest available strike (the 320) strike would trade at $9.90. The 310 strike would yield a return of 4.67% and the 320 strike would yield a return of 3.20%. If the 315 strike were available, that series would be priced at approximately $12.20 (a yield of 3.93%) and would minimize the risk of having the underlying stock called away at expiration.

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 have the necessary systems capacity to handle the potential additional traffic associated with the listing and trading of classes on individual stocks $5 Strike Price Program.

The proposed $5 Strike Price Program would provide investors increased opportunities to improve returns and manage risk in the trading of equity options that overlie high priced stocks. In addition, the proposed $5 Strike Price Program would allow investors to establish equity options positions that are better tailored to meet their investment, trading and risk management requirements.

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 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 the $5 Strike Price Program proposal would provide the investing public and other market participants increased opportunities because a $5 series in high priced stocks would provide market participants additional opportunities to hedge high priced securities. This would allow investors to better manage their risk exposure. Moreover, the Exchange believes the proposed $5 Strike Price Program 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 Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not 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

[3] Chapter IV, Section 6(d) also permits strike price intervals of $5 or greater where the strike price is greater than $25.00; and $2.50 or greater where the strike price is $25.00 or less.

[4] The prices listed in this example are assumptions and not based on actual prices. The assumptions are made for illustrative purposes only using the stock price as a hypothetical.

[5] The prices listed in this example are assumptions and not based on actual prices. The assumptions are made for illustrative purposes only using the stock price as a hypothetical.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

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 is substantially similar to that of another exchange that has been approved by the Commission.[10] Therefore, the Commission designates the proposal operative upon filing.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2011–001 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR– NASDAQ–2011–001. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ–2011–001 and should be submitted on or before February 2, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–438 Filed 1–11–11; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 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.

[10] *See* Securities Exchange Act Release No. 63654 (January 6, 2011) (SR–Phlx–2010–158) (order approving establishment of a $5 Strike Price Program).

[11] 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).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63651; File No. SR–CBOE–2011–002]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish a $5 Strike Price Program

January 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 January 3, 2011, the Chicago Board Options Exchange, Incorporated ("CBOE"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 Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend Interpretation and Policy .01 to Rule 5.5 to allow CBOE to list and trade series in intervals of $5 or greater where the strike price is more than $200 in up to five option classes on individual stocks. The text of the rule proposal is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's principal office, and at the Commission's Public Reference Room.

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 purpose of this proposed rule change is to modify Interpretation and Policy .01 to Rule 5.5 to allow the Exchange to list and trade series in intervals of $5 or greater where the strike price is more than $200 in up to five option classes on individual stocks ("$5 Strike Price Program") to provide investors and traders with additional opportunities and strategies to hedge high priced securities.

Currently, Interpretation and Policy .01(e) to Rule 5.5 permits strike price intervals of $10 or greater where the strike price is greater than $200.[5] The

[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)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] Interpretation and Policy .01(d) permits strike intervals of $2.50 or greater where the strike price is $25 or less and Interpretation and Policy .01(c)

Exchange is proposing to add the proposed $5 Strike Program as an exception to the $10 or greater program language in Rule 5.5.01(e). The proposal would allow the Exchange to list series in intervals of $5 or greater where the strike price is more than $200 in up to five option classes on individual stocks. The Exchange specifically proposes to create new subparagraph (f) to Rule 5.5.01 to provide:

> The Exchange may list series in intervals of $5 or greater where the strike price is more than $200 in up to five (5) option classes on individual stocks.

The Exchange believes the $5 Strike Price Program would offer investors a greater selection of strike prices at a lower cost. For example, if an investor wanted to purchase an option with an expiration of approximately one month, a $5 strike interval could offer a wider choice of strike prices, which may result in reduced outlays in order to purchase the option. By way of illustration, using Google, Inc. ("GOOG") as an example, if GOOG were trading at $610[6] with approximately one month remaining until expiration, the front month (one month remaining) at-the-money call option (the 610 strike) might trade at approximately $17.50 and the next highest available strike (the 620 strike) might trade at approximately $13.00. By offering a 615 strike, an investor would be able to trade a GOOG front month call option at approximately $15.25, thus providing an additional choice at a different price point.

Similarly, if an investor wanted to hedge exposure to an underlying stock position by selling call options, the investor may choose an option term with two months remaining until expiration. An additional $5 strike interval could offer additional and varying yields to the investor. For example if Apple, Inc. ("AAPL") were trading at $310[7] with approximately two months remaining until expiration, the second month (two months remaining) at-the-money call option (the 310 strike) might trade at approximately $14.50 and the next highest available strike (the 320) strike might trade at $9.90. If at expiration the price of AAPL closed at $310, the 310 strike call would have yielded a return of 4.68% and the 320 strike call would have yielded a return of 3.19% over the holding period. If the 315 strike call were available, that series might be priced at approximately $12.10 (a yield of 3.90% over the holding period) and would have had a lower risk of having the underlying stock called away at expiration than that of the 310 strike call.

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 have the necessary systems capacity to handle the potential additional traffic associated with the listing and trading of classes on individual stocks $5 Strike Price Program. The proposed $5 Strike Price Program would provide investors increased opportunities to improve returns and manage risk in the trading of equity options that overlie high priced stocks. In addition, the proposed $5 Strike Price Program would allow investors to establish equity options positions that are better tailored to meet their investment, trading and risk management requirements.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act[8] and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.[9] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[10] 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. The Exchange believes the $5 Strike Price Program proposal will provide the investing public and other market participants increased opportunities because a $5 series in high priced stocks will provide market participants additional opportunities to hedge high priced securities. This will allow investors to better manage their risk exposure, and the Exchange believes the proposed $5 Strike Price Program would benefit investors by giving them more flexibility to closely tailor their investment decisions in a greater number of securities. While the $5 Strike Price Program will generate additional quote traffic, the Exchange does not believe that this increased traffic will become unmanageable since the proposal is limited to a fixed number of classes. Further, the Exchange does not believe that the proposal will result in a material proliferation of additional series because it is limited to a fixed number of classes and the Exchange does not believe that the additional price points will result in fractured liquidity.

B. Self-Regulatory Organization's Statement on Burden on Competition

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

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[11] and Rule 19b–4(f)(6) thereunder.[12]

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 is substantially similar to that of another exchange that has been approved by the Commission.[13] Therefore, the Commission designates the proposal operative upon filing.[14]

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permits strike price intervals of $5 or greater where the strike price is greater than $25.

[6] The prices listed in this example are assumptions and not based on actual prices. The assumptions are made for illustrative purposes only using the stock price as a hypothetical.

[7] The prices listed in this example are assumptions and not based on actual prices. The assumptions are made for illustrative purposes only using the stock price as a hypothetical.

[8] 15 U.S.C. 78s(b)(1).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(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.

[13] *See* Securities Exchange Act Release No. 63654 (January 6, 2011) (SR–Phlx–2010–158) (order approving establishment of a $5 Strike Price Program).

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–2011–002 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–2011–002. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2011–002 and should be submitted on or before February 2, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–439 Filed 1–11–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63656; File No. SR–CBOE–2011–003]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Clarify Reciprocal Listing Respecting a $5 Strike Program for Stock Options

January 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 January 4, 2011, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to clarify that the Exchange may list $5 strike prices on any other option classes designated by other securities exchanges that employ a $5 Strike Program. The text of the rule proposal 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's Public Reference Room.

[15] 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)(iii).

[4] 17 CFR 240.19b–4(f)(6).

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

Recently, the Exchange proposed to adopt a $5 Strike Program (by modifying Interpretation and Policy .01 to Rule 5.5), which will allow the Exchange to list and trade series in intervals of $5 or greater where the strike price is more than $200 in up to five (5) option classes on individual stocks ("$5 Strike Program").[5] The purpose of this proposed rule change is to amend the text of Rule 5.5.01 to clarify that the Exchange may list $5 strike prices on any other option classes designated by other securities exchanges that employ a $5 Strike Program.

The Exchange has several strike setting programs that permit the Exchange to choose a fixed number of classes to participate in the programs. For each of these programs, the Exchange's rules also expressly set forth reciprocity provisions.[6] In other words, the Exchange is permitted to list series for classes that are selected by other securities exchanges that employ similar programs under their respective rules.

While the recent proposal to establish the $5 Strike Program did not specifically address a reciprocity provision, the Exchange's existing strike setting programs demonstrate the intent

[5] See SR–CBOE–2011–002.

[6] See Rules 5.5(d)(1) and 24.9(a)(2)(A)(i), which permit the Exchange to select five option classes to participate in the Short Term Option Series Program and to also list Short Term Option Series on any option classes that are selected by other securities exchanges that employ a similar program under their rules. *See also* Rules 5.5(e)(1) and 24.9(a)(2)(B)(i), which permit the Exchange to select five option classes to participate in the Quarterly Option Series Program and to also list Quarterly Option Series on any option classes that are selected by other securities exchanges that employ a similar program under their rules. Reciprocity provisions also exist for the $2.50 Strike Program, the $1 Strike Program and the $0.50 Strike Program. See Rules 5.5.01(a), 5.5.05(a) and 5.5.01(b).

of a reciprocity provision and the need for it to implement the $5 Strike Program. Clarifying that reciprocity is permitted is pro-competitive and will eliminate confusion. For example, CBOE will be able to list all series in option classes chosen by other exchanges and investors will be able to access these series across all exchanges that employ a $5 Strike Program. CBOE believes that this is consistent with the goals of the National Market System and the concepts of price improvement and best execution. Also, because all of the existing strike price programs that have been adopted by the various exchanges include reciprocity provisions, the Exchange believes that the current proposal will eliminate confusion and prevent listing errors amongst the exchanges.

It is expected that other options exchanges that have also proposed to establish a $5 Strike Program will submit similar clarifying proposals.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act[7] and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.[8] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[9] 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. The Exchange believes codifying a reciprocity provision to the $5 Strike Price Program eliminate investor confusion and promote competition. While the reciprocity provision will generate additional quote traffic, the Exchange does not believe that this increased traffic will become unmanageable since the proposal is limited to a fixed number of classes per exchange. Further, the Exchange does not believe that the proposal will result in a material proliferation of additional series because it is limited to a fixed number of classes per exchange and the Exchange does not believe that the additional price points will result in fractured liquidity.

[7] 15 U.S.C. 78s(b)(1).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

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

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[10] and Rule 19b–4(f)(6) thereunder.[11]

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 proposed reciprocity provision is similar to reciprocity provisions in place for other option strike price programs,[12] which have been previously approved by the Commission.[13] Therefore, the Commission designates the proposal operative upon filing.[14]

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.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 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.

[12] *See* Rule 5.5, Interpretations and Policies .01(a)(1) ($1 Strike Program), .01(b) ($0.50 Strike Program), and .05(a) ($2.50 Strike Program).

[13] *See, e.g.*, Securities Exchange Act Release No. 60694 (September 18, 2009); 74 FR 49048 (September 25, 2009) (SR–Phlx-2009–65) (approving NASDAQ OMX PHLX's $0.50 Strike Program, with reciprocity provision).

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–2011–003 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–2011–003. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2011–003 and should be submitted on or before February 2, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–443 Filed 1–11–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63645; File No. SR–MSRB–2010–18]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of Revisions to the Selection Specifications for the Municipal Securities Representative Qualification Examination (Series 52) Program

January 5, 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 December 23, 2010, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the MSRB. The MSRB has designated the proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization pursuant to Section 19(b)(3)(A)(i)[3] of the Act and Rule 19b–4(f)(1) thereunder,[4] which renders the proposal effective upon filing with the Commission. The MSRB proposes to implement the revised Series 52 examination program on January 3, 2011. 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 is filing with the Commission revisions to the selection specifications for the Municipal Securities Representative Qualification Examination (Series 52) program.

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/2010-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 MSRB 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

Section 15B(b)(2)(A) of the Act[5] authorizes the MSRB to prescribe standards of training, experience, competence, and such other qualifications as the Board finds necessary or appropriate in the public interest or for the protection of investors and municipal entities or obligated persons. On November 10, 2010, the MSRB filed with the Commission a proposed rule change (File No. SR–MSRB–2010–12) consisting of revisions to the study outline and selection specifications for the Municipal Securities Representative Qualification (Series 52) program. On November 12, 2010, the Commission published a notice of filing and immediate effectiveness for the revisions to the study outline and selection specifications for the Series 52 program.[6] The MSRB recently became aware that the selection specifications filed with the Commission on November 10, 2010, contained a technical error and the MSRB is filing this proposed rule change to correct that error. The selection specifications indicate how many questions are asked per examination on every topic.

2. Statutory Basis

The MSRB believes that the proposed revisions to the selection specifications are consistent with the provisions of Section 15B(b)(2)(A) of the Act, which authorizes the MSRB to prescribe standards of training, experience, competence, and such other qualifications as the Board finds necessary or appropriate in the public interest or for the protection of investors and municipal entities or obligated persons. Section 15B(b)(2)(A) of the Act also provides that the Board may appropriately classify municipal securities brokers, municipal securities dealers, and municipal advisors, and persons associated with municipal securities brokers, municipal securities dealers, and municipal advisors and require persons in any such class to pass tests prescribed by the Board.

The MSRB believes that the proposed revisions to the selection specifications are consistent with the provisions of Section 15B(b)(2)(A) of the Act in that the revisions will ensure that certain key concepts or rules are tested on each administration of the examination in order to test the competency of individuals seeking to qualify as municipal securities representatives with respect to their knowledge about MSRB rules and the municipal securities market.

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 Act, as amended.

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)(i) of the Act[7] and Rule 19b–4(f)(1)[8] thereunder, in that the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization. The MSRB proposes to implement the revised Series 52 examination program on January 3, 2011. 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

[15] 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)(i).

[4] 17 CFR 240.19b–4(f)(1).

[5] 15 U.S.C. 78o–4(b)(2)(A).

[6] *See* Release No. 34–63310 (November 12, 2010); 75 FR 70760 (November 18, 2010).

[7] 15 U.S.C. 78s(b)(3)(A)(i).

[8] 17 CFR 240.19b–4(f)(1).

public interest, for the protection of investors, or otherwise in furtherance of the purposes of the 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 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–2010–18 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–2010–18. 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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the MSRB. 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–2010–18 and should be submitted on or before February 2, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–433 Filed 1–11–11; 8:45 am]

BILLING CODE 8011–01–P

[9] *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63643; File No. SR–NYSEArca–2010–123]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. Establishing Fees for Support and Maintenance of the Trading Floor, and Fees To Defray the Costs of Floor Broker Order Capture Devices

January 5, 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 December 28, 2010, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to establish fees for support and maintenance of the Trading Floor, and fees to defray the costs of Floor Broker Order Capture Devices. The text of the proposed rule change is available at the Exchange's principal office, on the Commission's Web site at *http://www.sec.gov*, at the Commission's Public Reference Room, and *http://www.nyse.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of 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 charging a Market Maker Podium Fee of $90.00 per podium per month for each Market Maker on the Trading Floor using a podium. A podium is a table top space provided to a Market Maker on the floor. The fee will be assessed to recover ongoing costs associated with the Trading Floor, such as repairs and maintenance of the floor.

The Exchange proposes a Log-In Fee of $150 per month per assigned log-in ID to access the Exchange-sponsored Floor Broker Order Capture System by means of a Floor Broker Order Capture Device. The Log-In Fee is designed to cover the cost per log-in charged to the Exchange by data vendors for access to the Floor Broker Order Capture System. The log-in permits OTP Holder access to the system from any Floor Broker Order Capture Device, whether located in a Floor Broker's booth or a general access device located on the Trading Floor. Floor Brokers are required to use the Floor Broker Order Capture Devices to electronically record the receipt of an order and any events in the life of the order, including execution or cancellation. Market Makers may use the Floor Broker Order Capture Devices to execute and report open outcry trades between Market Makers.

In addition, each log-in will trigger market data costs to the Exchange which will be charged to system users on a pass-through basis.

The proposed changes will be effective on January 1, 2011.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the "Act"),[3] in general, and Section 6(b)(4) of the Act,[4] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The proposed fees are structured to recover ongoing costs to the Exchange for support of the Trading Floor physical

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f.

[4] 15 U.S.C. 78f(b)(4).

plant, and to recover costs being charged to the Exchange for use of Floor Broker Order Capture Devices.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[5] of the Act and subparagraph (f)(2) of Rule 19b–4[6] thereunder, because it establishes a due, fee, or other charge imposed by the NYSE Arca.

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–NYSEArca–2010–123 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–NYSEArca–2010–123. 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–NYSEArca–2010–123 and should be submitted on or before February 2, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–432 Filed 1–11–11; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63641; File No. SR–NASDAQ–2010–172]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend Fee Pilot Program for NASDAQ Last Sale

January 4, 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 December 29, 2010, The NASDAQ Stock Market LLC ("NASDAQ" or the "Exchange") 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

NASDAQ is proposing to extend for three months the fee pilot pursuant to which NASDAQ distributes the NASDAQ Last Sale ("NLS") market data products. NLS allows data distributors to have access to real-time market data for a capped fee, enabling those distributors to provide free access to the data to millions of individual investors via the internet and television. Specifically, NASDAQ offers the "NASDAQ Last Sale for NASDAQ" and "NASDAQ Last Sale for NYSE/Amex" data feeds containing last sale activity in US equities within the NASDAQ Market Center and reported to the jointly-operated FINRA/NASDAQ Trade Reporting Facility ("FINRA/NASDAQ TRF"), which is jointly operated by NASDAQ and the Financial Industry Regulatory Authority ("FINRA"). The purpose of this proposal is to extend the existing pilot program for three months, from January 1, 2011 through March 31, 2011.

This pilot program supports the aspiration of Regulation NMS to increase the availability of proprietary data by allowing market forces to determine the amount of proprietary market data information that is made available to the public and at what price. During the pilot period, the program has vastly increased the availability of NASDAQ proprietary market data to individual investors. Based upon data from NLS distributors, NASDAQ believes that since its launch in July 2008, the NLS data has been viewed by over 50,000,000 investors on Web sites operated by Google, Interactive Data, and Dow Jones, among others.

The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

7039. NASDAQ Last Sale Data Feeds

(a) For a three month pilot period commencing on [October] *January* 1, [2010] *2011*, NASDAQ shall offer two proprietary data feeds containing real-time last sale information for trades executed on NASDAQ or reported to the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

NASDAQ/FINRA Trade Reporting Facility.

(1)–(2) No change.

(b)–(c) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item III below, and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Prior to the launch of NLS, public investors that wished to view market data to monitor their portfolios generally had two choices: (1) Pay for real-time market data or (2) use free data that is 15 to 20 minutes delayed. To increase consumer choice, NASDAQ proposed a pilot to offer access to real-time market data to data distributors for a capped fee, enabling those distributors to disseminate the data at no cost to millions of internet users and television viewers. NASDAQ now proposes a three-month extension of that pilot program, subject to the same fee structure as is applicable today.[3]

NLS consists of two separate "Level 1" products containing last sale activity within the NASDAQ market and reported to the jointly-operated FINRA/NASDAQ TRF. First, the "NASDAQ Last Sale for NASDAQ" data product is a real-time data feed that provides real-time last sale information including execution price, volume, and time for executions occurring within the NASDAQ system as well as those reported to the FINRA/NASDAQ TRF. Second, the "NASDAQ Last Sale for NYSE/Amex" data product provides real-time last sale information including execution price, volume, and time for NYSE- and NYSE Amex-securities executions occurring within the NASDAQ system as well as those reported to the FINRA/NASDAQ TRF.

NASDAQ established two different pricing models, one for clients that are able to maintain username/password entitlement systems and/or quote counting mechanisms to account for usage, and a second for those that are not. Firms with the ability to maintain username/password entitlement systems and/or quote counting mechanisms are eligible for a specified fee schedule for the NASDAQ Last Sale for NASDAQ Product and a separate fee schedule for the NASDAQ Last Sale for NYSE/Amex Product. Firms that are unable to maintain username/password entitlement systems and/or quote counting mechanisms also have multiple options for purchasing the NASDAQ Last Sale data. These firms choose between a "Unique Visitor" model for internet delivery or a "Household" model for television delivery. Unique Visitor and Household populations must be reported monthly and must be validated by a third-party vendor or ratings agency approved by NASDAQ at NASDAQ's sole discretion. In addition, to reflect the growing confluence between these media outlets, NASDAQ offered a reduction in fees when a single distributor distributes NASDAQ Last Sale Data Products via multiple distribution mechanisms.

Second, NASDAQ established a cap on the monthly fee, currently set at $50,000 per month for all NASDAQ Last Sale products. The fee cap enables NASDAQ to compete effectively against other exchanges that also offer last sale data for purchase or at no charge.

As with the distribution of other NASDAQ proprietary products, all distributors of the NASDAQ Last Sale for NASDAQ and/or NASDAQ Last Sale for NYSE/Amex products pay a single $1,500/month NASDAQ Last Sale Distributor Fee in addition to any applicable usage fees. The $1,500 monthly fee applies to all distributors and does not vary based on whether the distributor distributes the data internally or externally or distributes the data via both the Internet and television.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and with Section 6(b)(4) of the Act,[5] in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of the data. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

NASDAQ believes that its NASDAQ Last Sale market data products are precisely the sort of market data product that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS—by lessening regulation of the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

> [E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[6]

By removing "unnecessary regulatory restrictions" on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether proprietary data is sold to broker-dealers at all, it follows that the price at which such data is sold should be set by the market as well.

The recent decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC*, No. 09–1042 (DC Cir. 2010) upheld the Commission's reliance upon competitive markets to set reasonable and equitably allocated fees for market data. "In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.'" *NetCoalition*, at 15 (quoting H.R.Rep. No. 94–229, at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 321, 323).

The court agreed with the Commission's conclusion that "Congress intended that 'competitive forces should dictate the services and practices that

[3] NASDAQ previously stated that it would file a proposed rule change to make the NLS pilot fees permanent. NASDAQ has also informed Commission staff that it is consulting with FINRA to develop a proposed rule change by FINRA to allow inclusion of FINRA/NASDAQ TRF data in NLS on a permanent basis. However, FINRA and NASDAQ have not completed their consultations regarding such a proposed rule change. Accordingly, NASDAQ is filing to seek a three-month extension of the existing pilot.

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4).

[6] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

constitute the U.S. national market system for trading equity securities.'"[7]

The Court in *NetCoalition*, while upholding the Commission's conclusion that competitive forces may be relied upon to establish the fairness of prices, nevertheless concluded that the record in that case did not adequately support the Commission's conclusions as to the competitive nature of the market for NYSEArca's data product at issue in that case. As explained below in NASDAQ's Statement on Burden on Competition, however, NASDAQ believes that there is substantial evidence of competition in the marketplace for data that was not in the record in the *NetCoalition* case, and that the Commission is entitled to rely upon such evidence in concluding that the fees established in this filing are the product of competition, and therefore in accordance with the relevant statutory standards.[8]

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. NASDAQ's ability to price its Last Sale Data Products is constrained by (1) competition between exchanges and other trading platforms that compete with each other in a variety of dimensions; (2) the existence of inexpensive real-time consolidated data and free delayed consolidated data; and (3) the inherent contestability of the market for proprietary last sale data.

The market for proprietary last sale data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities, in a vigorously competitive market.

Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade execution are a paradigmatic example of joint products with joint costs. The decision whether and on which platform to post an order will depend on the attributes of the platform where the order can be posted, including the execution fees, data quality and price and distribution of its data products. Without trade executions, exchange data products cannot exist. Moreover, data products are valuable to many end users only insofar as they provide information that end users expect will assist them or their customers in making trading decisions.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs. Moreover, an exchange's broker-dealer customers view the costs of transaction executions and of data as a unified cost of doing business with the exchange. A broker-dealer will direct orders to a particular exchange only if the expected revenues from executing trades on the exchange exceed net transaction execution costs and the cost of data that the broker-dealer chooses to buy to support its trading decisions (or those of its customers). The choice of data products is, in turn, a product of the value of the products in making profitable trading decisions. If the cost of the product exceeds its expected value, the broker-dealer will choose not to buy it. Moreover, as a broker-dealer chooses to direct fewer orders to a particular exchange, the value of the product to that broker-dealer decreases, for two reasons. First, the product will contain less information, because executions of the broker-dealer's orders will not be reflected in it. Second, and perhaps more important, the product will be less valuable to that broker-dealer because it does not provide information about the venue to which it is directing its orders. Data from the competing venue to which the broker-dealer is directing orders will become correspondingly more valuable.

Similarly, in the case of products such as NLS that are distributed through market data vendors, the vendors provide price discipline for proprietary data products because they control the primary means of access to end users. Vendors impose price restraints based upon their business models. For example, vendors such as Bloomberg and Reuters that assess a surcharge on data they sell may refuse to offer proprietary products that end users will not purchase in sufficient numbers. Internet portals, such as Google, impose a discipline by providing only data that will enable them to attract "eyeballs" that contribute to their advertising revenue. Retail broker-dealers, such as Schwab and Fidelity, offer their customers proprietary data only if it promotes trading and generates sufficient commission revenue. Although the business models may differ, these vendors' pricing discipline is the same: They can simply refuse to purchase any proprietary data product that fails to provide sufficient value. NASDAQ and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to market proprietary data products successfully. Moreover, NASDAQ believes that products such as NLS can enhance order flow to NASDAQ by providing more widespread distribution of information about transactions in real time, thereby encouraging wider participation in the market by investors with access to the internet or television. Conversely, the value of such products to distributors and investors decreases if order flow falls, because the products contain less content.

Analyzing the cost of market data distribution in isolation from the cost of all of the inputs supporting the creation of market data will inevitably underestimate the cost of the data. Thus, because it is impossible to create data without a fast, technologically robust, and well-regulated execution system, system costs and regulatory costs affect the price of market data. It would be equally misleading, however, to attribute all of the exchange's costs to the market data portion of an exchange's joint product. Rather, all of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

[7] *NetCoalition* v. *SEC* at p. 16.

[8] It should also be noted that Section 916 of Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act") has amended paragraph (A) of Section 19(b)(3) of the Act, 15 U.S.C. 78s(b)(3) to make it clear that all exchange fees, including fees for market data, may be filed by exchanges on an immediately effective basis. Although this change in the law does not alter the Commission's authority to evaluate and ultimately disapprove exchange rules if it concludes that they are not consistent with the Act, it unambiguously reflects a conclusion that market data fee changes do not require prior Commission review before taking effect, and that a formal proceeding with regard to a particular fee change is required only if the Commission determines that it is necessary or appropriate to suspend the fee and institute such a proceeding.

Competition among trading platforms can be expected to constrain the aggregate return each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. For example, some platform may choose to pay rebates to attract orders, charge relatively low prices for market information (or provide information free of charge) and charge relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower rebates (or no rebates) to attract orders, setting relatively high prices for market information, and setting relatively low prices for accessing posted liquidity. In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering. This would be akin to strictly regulating the price that an automobile manufacturer can charge for car sound systems despite the existence of a highly competitive market for cars and the availability of after-market alternatives to the manufacturer-supplied system.

The level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including ten self-regulatory organization ("SRO") markets, as well as internalizing broker-dealers ("BDs") and various forms of alternative trading systems ("ATSs"), including dark pools and electronic communication networks ("ECNs"). Each SRO market competes to produce transaction reports via trade executions, and two FINRA-regulated Trade Reporting Facilities ("TRFs") compete to attract internalized transaction reports. It is common for BDs to further and exploit this competition by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products.

The large number of SROs, TRFs, BDs, and ATSs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ATS, and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including NASDAQ, NYSE, NYSE Amex, NYSEArca, and BATS.

Any ATS or BD can combine with any other ATS, BD, or multiple ATSs or BDs to produce joint proprietary data products. Additionally, order routers and market data vendors can facilitate single or multiple BDs' production of proprietary data products. The potential sources of proprietary products are virtually limitless.

The fact that proprietary data from ATSs, BDs, and vendors can by-pass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products, as BATS and Arca did before registering as exchanges by publishing proprietary book data on the Internet. Second, because a single order or transaction report can appear in an SRO proprietary product, a non-SRO proprietary product, or both, the data available in proprietary products is exponentially greater than the actual number of orders and transaction reports that exist in the marketplace.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid, inexpensive, and profitable. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TracECN, BATS Trading and Direct Edge. Today, BATS publishes its data at no charge on its Web site in order to attract order flow, and it uses market data revenue rebates from the resulting executions to maintain low execution charges for its users. A proliferation of dark pools and other ATSs operate profitably with fragmentary shares of consolidated market volume.

Regulation NMS, by deregulating the market for proprietary data, has increased the contestability of that market. While broker-dealers have previously published their proprietary data individually, Regulation NMS encourages market data vendors and broker-dealers to produce proprietary products cooperatively in a manner never before possible. Multiple market data vendors already have the capability to aggregate data and disseminate it on a profitable scale, including Bloomberg, Reuters and Thomson.

The competitive nature of the market for products such as NLS is borne out by the performance of the market. In May 2008, the internet portal Yahoo! began offering its Web site viewers real-time last sale data provided by BATS Trading. NLS competes directly with the BATS product that is still disseminated via Yahoo! The New York Stock Exchange also distributes competing last sale data products at a price comparable to the price of NLS. Under the regime of Regulation NMS, there is no limit to the number of competing products that can be developed quickly and at low cost.

Moreover, consolidated data provides two additional measures of pricing discipline for proprietary data products that are a subset of the consolidated data stream. First, the consolidated data is widely available in real-time at $1 per month for non-professional users. Second, consolidated data is also available at no cost with a 15- or 20-minute delay. Because consolidated data contains marketwide information, it effectively places a cap on the fees assessed for proprietary data (such as last sale data) that is simply a subset of the consolidated data. The mere availability of low-cost or free consolidated data provides a powerful form of pricing discipline for proprietary data products that contain data elements that are a subset of the consolidated data, by highlighting the optional nature of proprietary products.

In this environment, a super-competitive increase in the fees charged for either transactions or data has the potential to impair revenues from both products. "No one disputes that competition for order flow is 'fierce'." *NetCoalition* at 24. The existence of fierce competition for order flow implies a high degree of price sensitivity on the part of broker-dealers with order flow, since they may readily reduce costs by directing orders toward the lowest-cost trading venues. A broker-dealer that shifted its order flow from one platform to another in response to order execution price differentials would both reduce the value of that platform's market data and reduce its own need to consume data from the disfavored platform. If a platform increases its market data fees, the change will affect the overall cost of doing business with the platform, and affected broker-dealers will assess whether they can lower their trading costs by directing orders elsewhere and thereby lessening the need for the more expensive data. Similarly, increases in the cost of NLS would impair the willingness of distributors to take a product for which there are numerous alternatives, impacting NLS data revenues, the value of NLS as a tool for attracting order flow, and ultimately, the volume of orders routed to NASDAQ and the value of its other data products.

In establishing the price for the NASDAQ Last Sale Products, NASDAQ considered the competitiveness of the market for last sale data and all of the

implications of that competition. NASDAQ believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish a fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all users. The existence of numerous alternatives to NLS, including real-time consolidated data, free delayed consolidated data, and proprietary data from other sources ensures that NASDAQ cannot set unreasonable fees, or fees that are unreasonably discriminatory, without losing business to these alternatives. Accordingly, NASDAQ believes that the acceptance of the NLS product in the marketplace demonstrates the consistency of these fees with applicable statutory standards.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Three comment letters were filed regarding the proposed rule change as originally published for comment NASDAQ responded to these comments in a letter dated December 13, 2007. Both the comment letters and NASDAQ's response are available on the SEC Web site at *http://www.sec.gov/comments/sr-nasdaq-2006-060/nasdaq2006060.shtml*.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[9] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2010–172 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2010–172. 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2010–172 and should be submitted on or before February 2, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–431 Filed 1–11–11; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(a)(ii).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63638; File No. SR–EDGX–2010–25]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGX Exchange, Inc. Fee Schedule

January 4, 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 December 28, 2010, the EDGX Exchange, Inc. (the "Exchange" or the "EDGX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fees and rebates applicable to Members[3] of the Exchange pursuant to EDGX Rule 15.1(a) and (c).

All of the changes described herein are applicable to EDGX Members. The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.directedge.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Member is any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, for orders routed to Nasdaq BX that remove liquidity, a rebate of $0.0002 per share is provided to Members (yielding Flag "C"). The Exchange proposes to increase this rebate to $0.0014 per share to reflect an increase in rebate provided by Nasdaq BX, effective January 3, 2011.

In addition, for orders routed or re-routed to NYSE that remove liquidity, a fee of $0.0021 is charged to Members (yielding Flag "D"). The Exchange proposes to increase this fee to $0.0023 to reflect an increase in fee assessed by NYSE, effective January 3, 2011. Similarly, for orders routed to NYSE that add liquidity, a rebate of $0.0013 per share is provided to Members (yielding Flag "F"). The Exchange proposes to increase this rebate to $0.0015 per share to reflect an increase in rebate provided by NYSE, effective January 3, 2011.

Currently, Members can qualify for the Mega Tier and be provided a rebate of $0.0032 per share for all liquidity posted on EDGX if they add or route at least 5,000,000 shares of average daily volume prior to 9:30 a.m. or after 4 p.m. (includes all flags except 6) and add a minimum of 25,000,000 shares of average daily volume on EDGX in total, including during both market hours and pre and post-trading hours. The Exchange proposes to increase this rebate to $0.0033 per share to incent Members to add liquidity to EDGX during both market hours and pre and post-trading hours. As fewer Members generally trade during pre and post-trading hours because of the time parameters associated with these trading sessions, the Exchanges believes that this proposed increase in rebate would incent liquidity during these trading sessions. The rebate associated with the other method to qualify for the Mega Tier (if the Member posts on a daily basis, measured monthly, 0.75% of the Total Consolidated Volume in average daily volume) remains unchanged at $0.0032 per share.

The Exchange believes that the above pricing is appropriate since higher rebates are directly correlated with more stringent criteria. The Mega Tier rebate (proposed at $0.0033 per share, otherwise set at $0.0032 per share) has the most stringent criteria, and is $0.0002/$0.0001 greater than the Ultra Tier rebate ($0.0031 per share) and $0.0003/$0.0002 greater than the Super Tier rebate ($0.0030 per share). For example, based on average TCV for November 2010 ($.0 billion), in order for a Member to qualify for the proposed Mega Tier rebate of $0.0033, the Member would have to add or route at least 5,000,000 shares of average daily volume prior to 9:30 a.m. or after 4 p.m. (includes all flags except 6) AND add a minimum of 25,000,000 shares of average daily volume on EDGX in total, including during both market hours and pre and post-trading hours. Another way a Member can qualify for the Mega Tier (with a rebate of $0.0032 per share) would be to post 60 million shares on EDGX. In order to qualify for the Ultra Tier, which has less stringent criteria than the Mega Tier, the Member would have to post 40 million shares on EDGX. Finally, the Super Tier has the least stringent criteria. In order for a Member to qualify for this rebate, the Member would have to post 10 million shares on EDGX. In addition, these rebates also result, in part, from lower administrative costs associated with higher volume.

EDGX Exchange proposes to implement these amendments to the Exchange fee schedule on January 1, 2011.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[4] in general, and furthers the objectives of Section 6(b)(4),[5] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that the proposed rates are equitable in that they apply uniformly to all Members. In addition, the rebates provided result, in part, from lower administrative costs associated with higher volume. The Exchange believes the fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act[6] and Rule 19b–4(f)(2)[7] 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:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–EDGX–2010–25 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGX–2010–25. 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

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 19b–4(f)(2).

Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission,[8] all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGX–2010–25 and should be submitted on or before February 2, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–430 Filed 1–11–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63664; File No. SR–ISE–2010–120]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, as Modified by Amendment No. 1, Relating to Fees and Rebates for Adding and Removing Liquidity

January 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 December 23, 2010, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission the proposed rule change, and on January 5, 2011, filed Amendment No. 1 to 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, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The ISE is proposing to amend its transaction fees and rebates for adding and removing liquidity. 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

The Exchange currently assesses a per contract transaction charge to market participants that add or remove liquidity from the Exchange ("maker/taker fees") in 100 options classes (the "Select Symbols").[3] The Exchange currently charges a take fee of: (i) $0.25 per contract for Market Maker, Market Maker Plus,[4] Firm Proprietary and Customer (Professional)[5] orders; (ii) $0.35 per contract for Non-ISE Market Maker[6] orders; (iii) $0.20 per contract for Priority Customer[7] orders for 100 or more contracts. Priority Customer orders for less than 100 contracts are not assessed a fee for removing liquidity. The Exchange now proposes to increase the take fee for Firm Proprietary and Customer (Professional) orders from $0.25 per contract to $0.28 per contract. Additionally, in the interest of standardizing the take fee charged for Priority Customer orders, the Exchange proposes to lower the take fee for Priority Customer orders of 100 or more contracts from $0.20 per contract to $0.12 per contract while increasing the take fee for Priority Customer orders of less than 100 contracts from $0.00 per contract to $0.12 per contract. As a result, all Priority Customer orders, regardless of size, will be assessed a take fee of $0.12 per contract.

For Complex Orders, the Exchange currently charges a take fee of: (i) $0.27 per contract for Market Maker, Market Maker Plus, Firm Proprietary and Customer (Professional) orders; and (ii) $0.35 per contract for Non-ISE Market Maker orders. Priority Customer orders, regardless of size, are not assessed a fee

[8] The text of the proposed rule change is available on Exchange's Web site at *http://www.directedge.com*, on the Commission's Web site at *http://www.sec.gov*, at EDGX, and at the Commission's Public Reference Room.

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Options classes subject to maker/taker fees are identified by their ticker symbol on the Exchange's Schedule of Fees. See Securities Exchange Act Release Nos. 61869 (April 7, 2010), 75 FR 19449 (April 14, 2010) (SR–ISE–2010–25), 62048 (May 6, 2010), 75 FR 26830 (May 12, 2010) (SR–ISE–2010–43), 62282 (June 11, 2010), 75 FR 34499 (June 17, 2010) (SR–ISE–2010–54), 62319 (June 17, 2010), 75 FR 36134 (June 24, 2010) (SR–ISE–2010–57), 62508 (July 15, 2010), 75 FR 42809 (July 22, 2010) (SR–ISE–2010–65), 62507 (July 15, 2010), 75 FR 42802 (July 22, 2010) (SR–ISE–2010–68), 62665 (August 9, 2010), 75 FR 50015 (August 16, 2010) (SR–ISE–2010–82), 62805 (August 31, 2010), 75 FR 54682 (September 8, 2010) (SR–ISE–2010–90), 63283 (November 9, 2010), 75 FR 70059 (November 16, 2010) (SR–ISE–2010–106) and 63534 (December 13, 2010), 75 FR 79433 (December 20, 2010) (SR–ISE–2010–114).

[4] A Market Maker Plus is a market maker who is on the National Best Bid or National Best Offer 80% of the time for series trading between $0.03 and $5.00 (for options whose underlying stock's previous trading day's last sale price was less than or equal to $100) and between $0.10 and $5.00 (for options whose underlying stock's previous trading day's last sale price was greater than $100) in premium in each of the front two expiration months and 80% of the time for series trading between $0.03 and $5.00 (for options whose underlying stock's previous trading day's last sale price was less than or equal to $100) and between $0.10 and $5.00 (for options whose underlying stock's previous trading day's last sale price was greater than $100) in premium across all expiration months in order to receive the rebate. The Exchange determines whether a market maker qualifies as a Market Maker Plus at the end of each month by looking back at each market maker's quoting statistics during that month. If at the end of the month, a market maker meets the Exchange's stated criteria, the Exchange rebates $0.10 per contract for transactions executed by that market maker during that month. The Exchange provides market makers a report on a daily basis with quoting statistics so that market makers can determine whether or not they are meeting the Exchange's stated criteria.

[5] A Customer (Professional) is a person who is not a broker/dealer and is not a Priority Customer.

[6] A Non-ISE Market Maker, or Far Away Market Maker ("FARMM"), is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended ("Exchange Act"), registered in the same options class on another options exchange.

[7] A Priority Customer is defined in ISE Rule 100(a)(37A) as a person or entity that is not a broker/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).

for removing liquidity from the Complex Order book. The Exchange now proposes to increase the take fee for Firm Proprietary and Customer (Professional) complex orders from $0.27 per contract to $0.28 per contract. The Exchange is not proposing any change to the take fee for Market Maker, Market Maker Plus, and Priority Customer complex orders.

The Exchange has designated this proposal to be operative on January 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 [8] in general, and furthers the objectives of Section 6(b)(4) of the Act [9] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members. The impact of the proposal upon the net fees paid by a particular market participant will depend on a number of variables, most important of which will be its propensity to add or remove liquidity in options overlying the Select Symbols. The Exchange believes that its proposal to assess a $0.12 per contract take fee for all Priority Customer orders is reasonable as it will standardize the fee charged by the Exchange for this category of market participants. The Exchange also believes that its proposal to assess a $0.28 per contract take fee for Firm Proprietary and Customer (Professional) regular and complex orders in the Select Symbols is also reasonable because the fee is within the range of fees assessed by other exchanges employing similar pricing schemes. For example, the proposed fees assessed to Firm Proprietary and Customer (Professional) orders are comparable to rates assessed by NASDAQ OMX PHLX, Inc. ("PHLX"). PHLX currently assesses a take fee of $0.45 for Firm and Broker-Dealer orders and $0.40 for Professional orders in its regular order book. PHLX also currently assesses a take fee of $0.27 for Firm and Professional orders and $0.35 for Broker-Dealer orders in its complex order book.[10]

The Exchange believes that the price differentiation between the various market participants is justified because market makers have obligations to the market that the other market participants, such as Firm Proprietary and Customer (Professional), do not. The Exchange believes that it is equitable to assess a nominally higher fee for Firm Proprietary and Customer (Professional) orders that do not have the quoting requirements that Exchange market makers do. Moreover, the Exchange believes that the proposed fees are fair, equitable and not unfairly discriminatory because the proposed fees are consistent with price differentiation that exists today at other option exchanges. The Exchange believes that the proposed fees are fair, equitable and not unfairly discriminatory for the reasons stated above.

The Exchange operates in a highly competitive market in which market participants can readily direct order flow to another exchange if they deem fee levels at a particular exchange to be excessive.

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)(A)(ii) of the Act.[11] 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–ISE–2010–120 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–2010–120. 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 offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2010–120, and should be submitted on or before February 2, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–477 Filed 1–11–11; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] *See* PHLX Fee Schedule at *http://www.nasdaqtrader.com/content/marketregulation/membership/phlx/feesched.pdf.*

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63637; File No. SR–EDGA–2010–26]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGA Exchange, Inc. Fee Schedule

January 4, 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 December 28, 2010, the EDGA Exchange, Inc. (the "Exchange" or the "EDGA") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fees and rebates applicable to Members[3] of the Exchange pursuant to EDGA Rule 15.1(a) and (c).

All of the changes described herein are applicable to EDGA Members. The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.directedge.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Member is any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, for orders routed to Nasdaq BX that remove liquidity, a rebate of $0.0002 per share is provided to Members (yielding Flag "C"). The Exchange proposes to increase this rebate to $0.0014 per share to reflect an increase in rebate provided by Nasdaq BX, effective January 3, 2011.

In addition, for orders routed or re-routed to NYSE that remove liquidity, a fee of $0.0021 is charged to Members (yielding Flag "D"). The Exchange proposes to increase this fee to $0.0023 to reflect an increase in fee assessed by NYSE, effective January 3, 2011. Similarly, for orders routed to NYSE that add liquidity, a rebate of $0.0013 per share is provided to Members (yielding Flag "F"). The Exchange proposes to increase this rebate to $0.0015 per share to reflect an increase in rebate provided by NYSE, effective January 3, 2011.

EDGA Exchange proposes to implement these amendments to the Exchange fee schedule on January 1, 2011.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[4] in general, and furthers the objectives of Section 6(b)(4),[5] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that the proposed rates are equitable in that they apply uniformly to all Members. The Exchange believes the fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4).

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[6] and Rule 19b–4(f)(2)[7] 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:

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–EDGA–2010–26 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–EDGA–2010–26. 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 website (*http://www.sec.gov/rules/sro.shtml*). Copies of the

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 19b–4(f)(2).

submission,[8] all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGA–2010–26 and should be submitted on or before February 2, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–429 Filed 1–11–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63655; File No. SR–ISE–2011–02]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the $5 Strike Price Program

January 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 January 5, 2011, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared by the 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 ISE Rule 504 to clarify that the Exchange may list option classes designated by other securities exchanges that employ a similar $5 Strike Program under their respective rules. 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

The purpose of this proposed rule change is to amend Supplementary Material .09 to ISE Rule 504 to clarify that the Exchange may list and trade series in intervals of $5 or greater where the strike price is more than $200 in up to five (5) option classes on individual stocks ("$5 Strike Price Program") or the Exchange may list series on any other option classes if those classes are specifically designated by other securities exchanges that employ a similar $5 Strike Program under their respective rules.

The Exchange recently filed a proposed rule change related to the $5 Strike Program.[3] The Exchange is now proposing to clarify that the options may be listed and traded in series that are listed by the Exchange or other securities exchanges that employ a similar $5 Strike Program, pursuant to the rules of the other securities exchange. This proposed reciprocity is currently permitted with the Exchange's $1 Strike Program,[4] $0.50 Strike Program[5] and $2.50 Strike Program.[6]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(5) of the Act[8] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange believes that clarifying that the Exchange may list and trade options in series that are listed by the Exchange or other securities exchanges that employ a similar $5 Strike Program will provide its members greater clarity on the types of options that may be listed by the Exchange.

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[9] and Rule 19b–4(f)(6) thereunder.[10]

[8] The text of the proposed rule change is available on Exchange's Web site at *http://www.directedge.com*, on the Commission's Web site at *http://www.sec.gov*, at EDGA, and at the Commission's Public Reference Room.

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* SR–ISE–2011–01.

[4] *See* Supplementary Material .01 to ISE Rule 504.

[5] *See* Supplementary Material .05 to ISE Rule 504.

[6] *See* ISE Rule 504(g).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent

Continued

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 proposed reciprocity provision is similar to reciprocity provisions in place for other option strike price programs,[11] which have been previously approved by the Commission.[12] Therefore, the Commission designates the proposal operative upon filing.[13]

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–2011–02 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–2011–02. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2011–02 and should be submitted on or before February 2, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–442 Filed 1–11–11; 8:45 am]

BILLING CODE 8011–01–P

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 Commission has waived this requirement in this case.

[11] *See* Rule 504, Supplementary Material .01 ($1 Strike Program); Rule 504, Supplementary Material .05 ($0.50 Strike Program); and Rule 504(g) ($2.50 Strike Program).

[12] *See, e.g.*, Securities Exchange Act Release No. 60694 (September 18, 2009); 74 FR 49048 (September 25, 2009) (SR–Phlx–2009–65) (approving NASDAQ OMX PHLX's $0.50 Strike Program, with reciprocity provision).

[13] 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).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63653; File No. SR–ISE–2011–01]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish a $5 Strike Price Program

January 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 January 4, 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 ISE Rule 504 to allow the Exchange to list and trade series in intervals of $5 or greater where the strike price is more than $200 in up to five option classes on individual stocks. 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

The purpose of this proposed rule change is to adopt Supplementary Material .09 to ISE Rule 504 to allow the Exchange to list and trade series in intervals of $5 or greater where the strike price is more than $200 in up to five option classes on individual stocks ("$5 Strike Price Program") to provide investors and traders additional opportunities and strategies to hedge high priced securities.

Currently, Exchange Rule 504(d) permits strike price intervals of $10 or greater where the strike price is $200 or more,[3] except the Exchange may list options classes on individual stocks for which the interval of strike prices will be $2.50 where the strike price is greater

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ISE Rule 504(d) also permits strike price intervals of $5 or greater where the strike price is greater than $25; and $2.50 or greater where the strike price is $25 or less.

than $25 but less than $50 (the "$2.50 Strike Price Program").[4]

The Exchange now proposes to list series in intervals of $5 or greater where the strike price is more than $200 in up to five option classes on individual stocks.

The Exchange believes the $5 Strike Price Program would offer investors a greater selection of strike prices at a lower cost. For example, if an investor wanted to purchase an option with an expiration of approximately one month, a $5 strike interval could offer a wider choice of strike prices, which may result in reduced outlays in order to purchase the option. By way of illustration, using Google, Inc. ("GOOG") as an example, if GOOG would trade at $610[5] with approximately one month remaining until expiration, the front month (one month remaining) at-the-money call option (the 610 strike) would trade at approximately $17.50 and the next highest available strike (the 620 strike) would trade at approximately $13.00. By offering a 615 strike an investor would be able to trade a GOOG front month call option at approximately $15.25, thus providing an additional choice at a different price point.

Similarly, if an investor wanted to hedge exposure to an underlying stock position by selling call options, the investor may chose an option term with two months remaining until expiration. An additional $5 strike interval could offer additional and varying yields to the investor. For example if Apple, Inc. ("AAPL") would trade at $310[6] with approximately two months remaining until expiration, the second month (two months remaining) at-the-money call option (the 310 strike) would trade at approximately $14.50 and the next highest available strike (the 320 strike) would trade at $9.90. The 310 strike would yield a return of 4.67% and the 320 strike would yield a return of 3.20%. If the 315 strike were available, that series would be priced at approximately $12.20 (a yield of 3.93%) and would minimize the risk of having the underlying stock called away at expiration.

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 have the necessary systems capacity to handle the potential additional traffic associated with the listing and trading of classes on individual stocks $5 Strike Price Program.

The proposed $5 Strike Price Program would provide investors increased opportunities to improve returns and manage risk in the trading of equity options that overlie high priced stocks. In addition, the proposed $5 Strike Price Program would allow investors to establish equity options positions that are better tailored to meet their investment, trading and risk management requirements.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(5) of the Act[8] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange believes the $5 Strike Price Program proposal would provide the investing public and other market participants increased opportunities because a $5 series in high-priced stocks would provide market participants additional opportunities to hedge high-priced securities allowing investors to better manage their risk exposure. 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

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[9] and Rule 19b–4(f)(6) thereunder.[10]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal is substantially similar to that of another exchange that has been approved by the Commission.[11] Therefore, the Commission designates the proposal operative upon filing.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[4] Initially adopted in 1995 as a pilot program, the pilot $2.50 Strike Price Program allowed options exchanges to list options with $ 2.50 strike price intervals for options trading at strike prices greater than $ 25 but less than $ 50 on a total of up to 100 option classes. *See* Securities Exchange Act Release No. 35993 (July 19, 1995), 60 FR 38073 (July 25, 1995) (approving File Nos. SR–Phlx–95–08, SR–Amex–95–12, SR–PSE–95–07, SR–CBOE–95–19, and SR–NYSE–95–12). In 1998, the pilot program was permanently approved and expanded to allow the options exchanges to select up to 200 option classes for the $2.50 Strike Price Program. *See* Securities Exchange Act Release No. 40662 (November 12, 1998), 63 FR 64297 (November 19, 1998) (approving File Nos. SR–Amex–98–21, SR–CBOE–98–29, SR–PCX–98–31, and SR–Phlx–98–26). The Exchange lists options with $2.50 strike price intervals on those classes selected by the other options exchanges and does not select any class for inclusion in the $2.50 Strike Price Program. *See* Securities Exchange Act Release No. 52960 (December 15, 2005), 70 FR 76090 (December 22, 2005) (SR–ISE–2005–59).

[5] The prices listed in this example are assumptions and not based on actual prices. The assumptions are made for illustrative purposes only using the stock price as a hypothetical.

[6] *Id.*

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). 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.

[11] *See* Securities Exchange Act Release No. 63654 (January 6, 2011) (SR–Phlx–2010–158) (order approving establishment of a $5 Strike Price Program).

[12] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–2011–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2011–01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2011–01 and should be submitted on or before February 2, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–440 Filed 1–11–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63649; File No. SR–NYSEArca–2010–122]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services

January 5, 2011.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on December 28, 2010, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. NYSE Arca filed the proposal pursuant to Section 19(b)(3)(A)[4] of the Act and Rule 19b–4(f)(2)[5] thereunder. 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 NYSE Arca Equities Schedule of Fees and Charges for Exchange Services (the "Schedule") to modify the fees that it charges for routing orders to the New York Stock Exchange LLC and NYSE Amex LLC for execution on those markets. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Effective January 1, 2011, the Exchange proposes to amend the Schedule to modify the fees that it charges for routing orders to the New York Stock Exchange LLC ("NYSE") and NYSE Amex LLC ("NYSE Amex") for execution on those markets. In two recent rule filings,[6] both NYSE and NYSE Amex have modified their fee structures for equities transactions, including changes to the rates for taking liquidity and adding liquidity, to become effective at the beginning of January 2011. The Exchange's current fees for routing orders to those exchanges are closely related to those exchanges' fees for taking and adding liquidity, and the Exchange is proposing an adjustment to its routing fees to maintain the existing relationship to the new fees in place at the NYSE and NYSE Amex.

The NYSE Fee Filing increased the NYSE's charge for execution of customer orders that take liquidity from the NYSE from $0.0021 per share to $0.0023 per share, and increased the rebate for execution of customer orders that add liquidity to the NYSE from $0.0013 per share to $0.0015 per share. Currently, for NYSE Arca Tier 1 and Tier 2 customers, the fee for routing orders in Tape A securities to the NYSE outside the book is equal to the NYSE "take" rate of $0.0021 per share, and the fee for routing such orders to the NYSE for non-tier customers is slightly higher at $0.0023 per share. Consequently, the Exchange is proposing to increase each of those fees by $0.0002 to $0.0023 per share and $0.0025 per share, respectively, in line with the $0.0002 increase in the NYSE "take" rate.

In addition, the Exchange currently charges $0.0019 per share for Primary Sweep Orders in Tape A securities that are routed outside the book to the NYSE for execution. This charge applies to Tier 1, Tier 2 and non-tier customers. In order to maintain the existing relationship to the other Exchange

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(2).

[6] *See* SR–NYSE–2010–87 (the "NYSE Fee Filing") and SR–NYSEAmex–2010–125 (the "NYSE Amex Fee Filing").

routing fees that are being adjusted upward, the Exchange is also proposing to increase this fee by $0.0002 to both tier and non-tier customers, to a level of $0.0021 per share.

Finally, for Primary Only Plus ("PO+") orders, the current Exchange fee for orders routed to the NYSE that remove liquidity from the NYSE is $0.0021 per share, which is equal to the current NYSE "take" rate, and the Exchange credit for such orders routed to the NYSE that provide liquidity to the NYSE is $0.0013 per share, which is equal to the current NYSE rebate for execution of customer orders that add liquidity to the NYSE. Consequently, the Exchange is proposing to increase its fees (credits) for routing PO+ orders to the NYSE by the same amount ($0.0002) as the increase in the corresponding NYSE fees (credits). The proposed new fee for PO+ orders routed to the NYSE that remove liquidity is $0.0023 per share, and the proposed new credit for such orders routed to the NYSE that provide liquidity is $0.0015 per share. These changes would maintain the current relationship with NYSE rates.

The NYSE Amex Fee Filing increased NYSE Amex's charge for execution of customer orders that take liquidity from NYSE Amex from $0.0025 per share to $0.0028 per share, and increased the rebate for execution of customer orders that add liquidity to NYSE Amex from $0.0015 per share to $0.0016 per share. Currently, the Exchange fee is $0.0025 per share for PO and PO+ orders routed to NYSE Amex that remove liquidity from NYSE Amex, which is equal to the current NYSE Amex "take" rate, and the Exchange credit for such orders routed to NYSE Amex that provide liquidity to NYSE Amex is $0.0015, which is equal to the current NYSE Amex rebate for execution of customer orders that add liquidity to NYSE Amex. Consequently, the Exchange is proposing to increase its fees (credits) for routing PO and PO+ orders to NYSE Amex by the same amounts as the increase in the corresponding NYSE fees (credits). The proposed new fee for PO and PO+ orders routed to NYSE Amex that remove liquidity is $0.0028 per share, and the proposed new credit for such orders routed to NYSE Amex that provide liquidity is $0.0016 per share. These changes would maintain the current relationship with NYSE Amex rates.

Finally, the Exchange is adding a sentence in the introduction of the Tier 1 and Tier 2 volume levels to clarify that the calculation of U.S. Average Daily Consolidated Share Volume does not include trades on days when the market closes early.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the "Act"),[7] in general, and Section 6(b)(4) of the Act,[8] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes that the proposal does not constitute an inequitable allocation of fees, as all similarly situated member organizations and other market participants will be subject to the same fee structure, and access to the Exchange's market is offered on fair and non-discriminatory terms.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[9] of the Act and subparagraph (f)(2) of Rule 19b–4[10] thereunder, because it establishes a due, fee, or other charge imposed by NYSE Arca.

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–NYSEArca–2010–122 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–NYSEArca–2010–122. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange.[11] 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–NYSEArca–2010–122 and should be submitted on or before February 2, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–437 Filed 1–11–11; 8:45 am]

BILLING CODE 8011–01–P

[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).

[11] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov*.

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63648; File No. SR–NASDAQ–2011–003]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Fees for Members Using the NASDAQ Market Center

January 5, 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 January 3, 2011, The NASDAQ Stock Market LLC ("NASDAQ") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

NASDAQ proposes to modify pricing for NASDAQ members using the NASDAQ Market Center. NASDAQ will implement the proposed change on January 3, 2011. The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com/*, at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASDAQ has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is amending Rule 7018 to make modifications to its pricing schedule for execution and routing of orders through the NASDAQ Market Center. With respect to execution of securities priced at less than $1, NASDAQ is increasing the charge to access liquidity from 0.2% of the total transaction cost to 0.3% of the total transaction cost. The change is designed to offset some of the fee decreases that are also being adopted in this proposed rule change.

With respect to execution of securities priced at $1 or more, NASDAQ is making a number of changes. The first set of changes relate to pricing changes that NASDAQ OMX BX, Inc. ("BX") has proposed to implement on January 3, 2011.[3] Currently, BX offers a credit of $0.0002 per share executed for orders that access liquidity on BX, and NASDAQ charges $0.0002 per share executed for directed orders sent to BX. Effective January 3, 2011, BX will raise the credit for orders that access liquidity to $0.0014 per share executed. Accordingly, with respect to orders directed to BX, NASDAQ will now pay a credit of $0.0005 per share executed, thereby passing on some of the higher credit provided by BX with respect to such orders.

Second, in response to recently announced changes to pricing at the New York Stock Exchange ("NYSE"),[4] NASDAQ is modifying several of its fees associated with routing orders to NYSE. To reflect the increase in the NYSE credit for orders that add liquidity, NASDAQ is increasing its credit for routed orders using the DOTI, STGY, SCAN, SKNY, or SKIP routing strategies and that add liquidity at NYSE from $0.0013 to $0.0015 per share executed. To reflect the increase in NYSE's charge for orders that access liquidity, NASDAQ is increasing its charge for routed orders using the DOTI, STGY, SCAN, SKNY, or SKIP routing strategies that access liquidity at NYSE from $0.0021 to $0.0023 per share executed. Similarly, for directed Intermarket Sweep Orders that access liquidity at NYSE, NASDAQ's fee will increase from $0.0023 to $0.0025 per share executed; for other directed orders that access liquidity at NYSE, NASDAQ's fee will increase from $0.0022 to $0.0024 per share executed for members that provide an average daily volume of more than 35 million shares of liquidity through NASDAQ Market Center during the month, or from $0.0023 to $0.0025 per share executed for other members; and for MOPP orders that access liquidity at NYSE, NASDAQ's fee will increase from $0.0023 to $0.0025 per share executed.[5]

Third, NASDAQ is modifying the fees applicable to its SAVE routing strategy.[6] Under the SAVE strategy, at the option of the entering party, orders either route to NASDAQ OMX BX ("BX") and NASDAQ OMX PSX ("PSX"), check the NASDAQ book, and then route to other destinations on the routing table for SAVE, or check the NASDAQ book first and then route to routing table destinations, which may include BX and PSX. For orders pursuing this routing approach, NASDAQ passes through all fees assessed and rebates offered by BX and PSX, charges $0.0010 per share executed for orders that execute at NYSE, charges $0.0026 per share executed for orders that execute at other away venues, and charges the normal NASDAQ execution charge of $0.0030 per share executed for shares that execute at NASDAQ. Under the change, NASDAQ will increase the fee for orders that execute at NYSE to $0.0022 per share executed, while decreasing the fee for orders that execute at NASDAQ to $0.0027 per share executed. The change is designed to encourage greater use of the SAVE routing strategy, while at the same time bringing the routing fee charged by NASDAQ closer to the $0.0023 per share executed fee charged by NYSE for orders routed to it.[7]

Fourth, NASDAQ is introducing a new liquidity provider rebate tier for members that provide an average daily volume of 3 million shares or more of liquidity through quotes/orders that are not displayed. Although NASDAQ believes that transparent markets should be encouraged whenever possible, it allows members to provide non-displayed liquidity to offer an alternative to trading venues that are entirely dark. For members qualifying for this tier, the rebate for non-displayed quotes/orders will be $0.0015 per share

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 63617 (December 29, 2010) (SR–BX–2010–092).

[4] *See* SR–NYSE–2010–87 (December 22, 2010).

[5] NASDAQ is also deleting fee language stipulating fees charged for odd-lot orders and the odd-lot portion of round lot orders executed at NYSE. As provided in Securities Exchange Act Release No. 62302 (June 16, 2010), 75 FR 35856 (June 23, 2010) (SR–NYSE–2010–43), NYSE eliminated its special rules for processing of odd lots during 2010. As a result, odd lots now receive the same treatment as other orders for billing purposes as well as order processing purposes. By eliminating its fee language relating to odd lots, NASDAQ ensures that its fees for routing such orders to NYSE also follow NYSE's fee increase, which applies to all orders.

[6] Securities Exchange Act Release No. 61460 (February 1, 2010), 75 FR 6077 (February 5, 2010) (SR–NASDAQ–2010–018).

[7] Similarly, NASDAQ is increasing the fee for orders using the TFTY routing strategy that route to NYSE from $0.0020 per share executed to $0.0022 per share executed to reflect NYSE's changes.

executed, and the rebate for displayed quotes/orders will be $0.0020 per share executed (unless the member otherwise qualifies for a higher rebate due to other characteristics of its trading volume).[8]

Finally, NASDAQ is deleting obsolete rule text describing fees for NASDAQ's crossing network functionality, which was recently discontinued.[9]

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[10] in general, and with Section 6(b)(4) of the Act,[11] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls. The impact of the price changes upon the net fees paid by a particular market participant will depend upon a number of variables, including the prices of the market participant's quotes and orders relative to the national best bid and offer (*i.e.*, its propensity to add or remove liquidity), the prices of securities that it trades, its usage of non-displayed quotes/orders, its trading volumes, and its use of particular routing strategies to which the fee change applies.

NASDAQ notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. Accordingly, if particular market participants object to the proposed fee changes, they can avoid paying the fees by directing orders to other venues. NASDAQ believes that its fees continue to be reasonable and equitably allocated to members on the basis of whether they opt to direct orders to NASDAQ.

While the changes increase fees for stocks trading below $1, with respect to other stocks, the changes either reduce fees or reflect increased charges associated with routing orders to NYSE. Specifically, in the case of DOTI, STGY, SCAN, SKNY, SKIP, MOPP, TFTY, directed orders, and odd-lot orders, NASDAQ is merely increasing its applicable fee and rebate by $0.0002 per share executed to reflect the corresponding changes made to the fees and rebates charged and offered to NASDAQ. NASDAQ believes that it is reasonable and equitable to pass on these fee changes to its members. In the case of the changes to the fees associated with the SAVE routing strategy, NASDAQ is reducing the fee charged to portions of SAVE orders that are executed at NASDAQ, as a means to encourage greater use of this strategy, which is available to all NASDAQ members on equal terms. In addition, NASDAQ is increasing the fee for SAVE orders routed to NYSE, from $0.0010 per share executed to $0.0022 per share executed, but this fee remains lower than the $0.0023 per share executed fee charged to NASDAQ by NYSE for these orders. Accordingly, the change allows a better reflection of NASDAQ's routing costs while still offering members a routing strategy designed to provide low-cost executions of orders at BX, PSX, NASDAQ, and NYSE.

The change for directed orders sent to BX reflects recent pricing changes by that venue, and allows NASDAQ to pass on a portion of the enhanced rebate that BX is paying for orders that access liquidity, while still reflecting the value offered by NASDAQ to its members by providing routing services. In this regard, the fees charged and rebates offered by NASDAQ for routing orders to BX are reasonable and equitable, in that the decision to use NASDAQ as a router is entirely voluntarily, and members can avail themselves of numerous other means of directing orders to BX, including becoming members of BX or using any of a number of competitive routing services offered by other exchanges and brokers.

The addition of a new, volume-based pricing tier for liquidity provision will provide members with an additional means to obtain a favorable rate of $0.0015 per share executed for non-displayed liquidity, in addition to the volume-based tiers already in effect. Volume-based discounts such as the enhanced rebate proposed here have been widely adopted in the cash equities markets, and are equitable because they are open to all members on an equal basis and provide discounts that are reasonably related to the value to an exchange's market quality associated with higher levels of liquidity provision.

Finally, NASDAQ is increasing its fees for orders in stocks priced under $1 as a means to offset some of the fee decreases that are also being adopted in this proposed rule change. The fee is reasonable and equitable in that it applies equally to all members trading stocks priced below $1, and is consistent with Rule 610(c) under Regulation NMS,[12] which found that a fee cap set at that level would promote the objectives of equal regulation and preventing excessive fees. As the Commission determined in that matter, competition is best able to determine whether a strategy of charging fees set at higher levels, or of charging a lower fee and paying a higher rebate, will be most successful.[13]

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Because the market for order execution and routing is extremely competitive, members may readily direct orders to NASDAQ's competitors if they believe that the competitors offer more favorable pricing.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[14] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

[8] The $0.0015 per share rebate for non-displayed quotes/orders is the same as the rebate for non-displayed quotes/orders offered to members qualifying for certain other favorable rebate tiers, and higher than the base rebate for non-displayed quotes/orders of $0.0010 per share executed. The rebate of $0.0020 per share executed for displayed quotes/orders is the same as the base rebate for displayed quotes/orders. In limited circumstances, a member qualifying for the new tier might also qualify for a tier that has a more favorable rebate for displayed quotes/orders but a less favorable rebate for non-displayed quotes/orders. In that case, the member qualifying for both tiers would receive the higher rebate for both types of quotes/orders.

[9] Securities Exchange Act Release No. 62735 (August 17, 2010), 75 FR 51859 (August 23, 2010) (SR–NASDAQ–2010–101).

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(4).

[12] 17 CFR 242.610(c).

[13] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37596 (June 29, 2005).

[14] 15 U.S.C. 78s(b)(3)(a)(ii).

including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2011–003 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2011–003. 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 offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2011–003, and should be submitted on or before February 2, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–436 Filed 1–11–11; 8:45 am]

BILLING CODE 8011–01–P

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63647; File No. SR–Phlx–2010–148]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Order Granting Approval of a Proposed Rule Change Relating to Certain Membership Rules Including Affiliations and Lapse of Membership Applications

January 5, 2011.

I. Introduction

On November 5, 2010, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to certain membership rules. The proposed rule change was published for comment in the **Federal Register** on November 22, 2010.[3] The Commission received no comment letters on the proposal. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

A. Affiliations

Currently, Phlx Rule 793 ("Affiliations—Dual or Multiple") allows a person that holds a Phlx trading permit to associate or affiliate with one or more Phlx members or a non-member that is engaged in the securities business if such affiliation is approved in writing by the member and disclosed to the Exchange.[4] However, no member may use his or her trading permit to qualify more than one member organization. Further, the rule provides that the Exchange could disapprove multiple affiliations that the Exchange believed were "inconsistent with Exchange standards of financial responsibility, operational capability, or compliance responsibility."

Among other things, Rule 793 allows a broker-dealer to seek an affiliation in order to obtain membership status without the need to secure a membership seat (or, subsequent to the Exchange's demutualization, a trading permit). Such an arrangement would have been appropriate, for example, where a broker-dealer sought only electronic access to the Exchange, since the Exchange only requires one permit to qualify a member organization. Another example would be applicable in the case of access to the Phlx trading floor. Because Phlx requires each person associated with a member organization on the trading floor who functions in a trading capacity to have a permit, and every trader on the floor must possess a Series A–1 permit,[5] affiliation could allow floor traders to affiliate with another member organization to satisfy certain trading or staffing requirements.

The Exchange now proposes to eliminate Rule 793. In its place, the Exchange proposes to amend existing Rule 908 ("Rights and Privileges of A–1 Permits") to add a new paragraph (b)(i) to allow a trading permit holder on the Exchange's floor to affiliate with up to two member organizations that are under common ownership. Specifically, the proposed rule provides that: "[n]otwithstanding applicable By-Laws and Rules conditioning membership, a Series A–1 permit holder on the Exchange's trading floor may be affiliated with up to two (2) member organizations (a primary and a secondary member organization) that are under common ownership * * *." The proposed rule would define "common ownership" to be at least 75% common ownership between the member organizations. Further, both the primary and secondary member organizations would need to notify the Phlx Membership Department of the affiliation, and such notification must include an attestation of common ownership, the names of the individuals responsible for supervision of the permit holder, and the Exchange account numbers for billing purposes. Under the proposed rule, a Series A–1 permit holder would have the ability to engage in trading activity on the Exchange's floor on behalf of either the primary or secondary member organization that the permit is affiliated with per Rule 908(b)(i).[6]

Despite the ability to affiliate with up to two member organizations, the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 63318 (November 16, 2010), 75 FR 71155 ("Notice").

[4] Specifically, the rule provides that "[n]o person shall at the same time be a partner, * * * officer, director, stockholder, or associated person of more than one member or participant organization, nor shall he be affiliated in any manner with a non-member or non-participant organization which is engaged in the securities business, unless such affiliation has been disclosed to and approved in writing by the member and/or participant organizations and such approval has been filed with the Office of the Secretary."

[5] For example, a Series A–1 permit holder is required to display a badge when on the trading floor that identifies the member organization on whose behalf the trader is trading that day. A Series A–1 permit holder may not trade for more than one member organization on the same day.

[6] A Series A–1 permit holder may not trade for more than one member organization on the same day.

proposal provides that a Series A–1 permit holder would be required to comply with all current membership By-Laws and Rules. Further, both the permit holder and the affiliated member organizations also must comply with all applicable trading, registration, qualification, examination, and other membership requirements. In particular, the Series A–1 permit holder is required to obtain and maintain all necessary qualifications (including examinations) and registrations. In addition, the Series A–1 permit holder would be required to disclose to the Exchange the individuals at each member organization (both the primary and secondary member organization) that are responsible for supervising the Series A–1 permit holder.

As a consequence of the proposal, any Series A–1 permit holder that currently affiliates with an unrelated party would not be permitted to continue to qualify that member organization. In addition, a permit holder would not be permitted to maintain an affiliation with more than two member organizations, and both organizations must be under common ownership.

In recognition of the proposed deletion of Rule 793 and new Rule 908(b)(i), the Exchange also proposed to make conforming changes to other rules that reference affiliation. In particular, the Exchange proposed to amend Option Floor Procedure Advice ("OFPA") F–9 to conform to new Rule 908(b)(i).[7] In addition, the Exchange would remove references to "dual affiliation" in OFPA F–11 and Regulation 3 in favor of a reference simply to "affiliation," and would replace a reference to Rule 793 with Rule 908 in OFPA F–11. The Exchange further would amend Rule 908(h) to add an "or" to the text of the rule to make clear that a permit may be transferred either intra-firm or to an inactive nominee registered with the Exchange.

B. Lapsed Applications

In addition, the Exchange proposes to amend Rule 900.2 to address lapsed membership applications. Pursuant to Exchange Rule 900.2, applicants desiring membership in the Exchange are required to submit information in a form prescribed by the Membership Department.[8] According to the Exchange, after a 90 calendar day period has elapsed, the information provided by the applicant is stale and no longer provides a reliable or reasonable basis for the Exchange to make a determination on admitting a person for membership.[9] The Exchange represented that the Membership Department expends a considerable amount of resources requesting updates from members and researching information to make a reasonable determination when an application is outdated.[10]

To address this situation, the Exchange proposed to amend Exchange Rule 900.2 [11] to require persons seeking membership to the Exchange to provide all information and respond to subsequent requests from the Membership Department for information within a 90 calendar day period. Any failure to respond in the prescribed period would result in the application lapsing. If an application lapses, the person would be required to submit a new application if it wants to continue with its application.[12] Upon a showing of good cause, the Exchange may extend the timeframe.[13] The Exchange would not refund the fee associated with submitting an application and the applicant would be required to pay a new fee to resubmit the application if it chooses to proceed with its application for membership.[14]

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,[15] and, in particular, the requirements of Section 6(b) of the Act [16] and the rules and regulations thereunder. Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[17] in that the proposal promotes just and equitable principles of trade, prevents fraudulent and manipulative acts, removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest.

The Commission believes the proposal, which limits the ability of a Series A–1 permit holder to qualify other organizations for Exchange membership is reasonable, as it will continue to allow flexibility in permitting a permit holder to qualify up to one other member organization (the "secondary member organization") for Exchange membership that is under common ownership with the primary member organization with which the permit holder is associated. While the Commission notes that based on the proposal, a Series A–1 permit holder who currently affiliates with an unrelated member organization (not under common ownership) to qualify the member organization for electronic access or access to the trading floor would not be permitted to continue to qualify that member organization, the Commission believes that the proposal is a reasonable alternative that may assist firms in addressing staffing issues for entities under a common ownership that conduct a floor-based trading business.

The Exchange's proposal recognizes the changed environment in terms of the means by which persons obtain access to the Exchange. Current Rule 793 was adopted when the Exchange was a membership organization and access was obtained through ownership of a limited number of seats on the Exchange. Rule 793 allows persons to access and trade on the Exchange that might not have otherwise been able to purchase or obtain a membership seat. However, since it demutualized, the Exchange now offers access via an unlimited number of trading permits, which can be more readily obtained by qualified individuals compared to former membership seats. In this respect, the Exchange's proposal

[7] In particular, the Exchange proposed in F–9 to remove references to "dual" so that the rule simply refers to affiliations; to require reports of affiliations to be sent to the Membership Department instead of the Exchange's Office of the Secretary to conform with the text of amended Rule 908; replace the reference to Rule 793, which is being deleted, with a reference to Rule 908; amend the language in OFPA F–9 to remove the requirements to explain compensation since affiliations would only be permitted for organizations that are under common ownership; and add a sentence indicating that floor members must adhere to the requirements in renamed (a) and (b), and to reference Exchange Rule 1020 for the newly named F–9(ii)(a).

[8] The Membership Department posts the requisite forms on the Exchange's Web site at *http://www.nasdaqomxtrader.com/Trader.aspx?id=membership_phlx*. The Membership Department updates the forms from time to time and makes them available on this Web site.

[9] *See* Notice, *supra* note 3, at 71157.

[10] *See id.*

[11] The Commission notes that the Exchange proposed to renumber Rule 900.2(e) as 900.2(f) due to the new proposed Rule 900.2(e).

[12] The purpose of the new application would be to update all information to provide the Membership Department with current information on which to base a decision to accept the applicant for membership. The Exchange expressed its intent to file a proposal with the Commission to amend its Fee Schedule to reflect the lapsed application fee.

[13] *See* Notice, *supra* note 3, at 71157. The Exchange also may extend the time period when it makes a request for additional information relatively close to the 90-day deadline. *See id.*

[14] The Exchange's Application Fee can be found on the Fee Schedule located on the Exchange's Web site at *http://www.nasdaqamxtrader.com/content/marketregulation/membership/phlx/feesched.pdf*.

[15] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

modernizes the affiliation provision in recognition of the transition of the Exchange from a mutual to a demutualized organization.

Furthermore, the Commission notes that the Exchange represented in its proposal, as described above, that the Exchange would continue to have access to information on an affiliation necessary to carry out its regulatory responsibility with respect to the member organizations and their affiliated persons. Further, an affiliation would not excuse a person from any of the Exchange's By-Laws and rules governing membership. Notably, both the permit holder and the affiliated member organizations must comply with all applicable registration, qualification, examination, and other membership requirements, and the permit holder must continue to obtain and maintain all necessary qualifications (including examinations) and registrations. Further, the Series A–1 permit holder must disclose to the Exchange the individuals at each member organization (both the primary and secondary member organization) that are responsible for supervising the Series A–1 permit holder. The Commission believes that these provisions are designed to ensure compliance with applicable membership rules and should assure the Exchange's oversight of any affiliation.

In addition, the Commission believes that the Exchange's proposed conforming changes to OFPA F–9, F–11, and Regulation 3 appropriately reflect the proposed deletion of Rule 793 and the new provision in Rule 908(b)(i). Separately, the Commission believes that the proposal to amend the language in Rule 908(h) should provide Exchange members with clarity as to the transfer of permits.

Finally, the Commission believes that requiring applicants for Phlx membership to respond to requests for documentation or additional information within a 90 calendar day period, absent a showing of good cause, is reasonable and should provide the Exchange's Membership Department up-to-date information that it can utilize to make decisions concerning membership applications. The 90-day response period and subsequent lapse of an application for non-response should encourage prompt replies by applicants to Exchange requests for information and documentation and should assure that the Exchange has reliable and current information on which to base membership decisions.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (SR–Phlx–2010–148) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–435 Filed 1–11–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63654; File No. SR–Phlx-2010–158]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Order Granting Approval of Proposed Rule Change Establishing a $5 Strike Price Program

January 6, 2011.

I. Introduction

On November 12, 2010, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to allow the Exchange to list and trade option series with strike price intervals of $5 or greater where the strike price is more than $200 in up to five option classes on individual stocks. The proposed rule change, as amended, was published for comment in the **Federal Register** on November 24, 2010.[3] The Commission received no comment letters on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

Phlx has proposed to modify Commentary .05 to Exchange Rule 1012 to allow the Exchange to list and trade series in intervals of $5 or greater where the strike price is more than $200 in up to five option classes on individual stocks ("$5 Strike Price Program"). Currently, Exchange Rule 1012 at Commentary .05 permits strike price intervals of $10 or greater where the strike price is $200 or more.[4] The proposal would allow the Exchange to list series in intervals of $5 or greater where the strike price is more than $200 in up to five option classes on individual stocks.

In support of its proposal, Phlx stated that it believes the proposed $5 Strike Price Program would provide investors increased opportunities to improve returns and manage risk in the trading of equity options that overlie high priced stocks. In addition, the Exchange believes the proposed $5 Strike Price Program would allow investors to establish equity options positions that are better tailored to meet their investment, trading, and risk management requirements.

Phlx further stated that it has analyzed its capacity and represented that the Exchange and the Options Price Reporting Authority have the necessary systems capacity to handle the potential additional traffic associated with the listing and trading of new series associated with the $5 Strike Price Program.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[5] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[6] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

As the Exchange notes, the proposal should provide investors with added flexibility in the trading of options on high-priced securities and allow investors to establish options positions that are more precisely tailored to meet their investment objectives. The Commission believes that the proposal strikes a reasonable balance between the Exchange's desire to accommodate market participants by offering a wider array of investment opportunities and the need to avoid unnecessary proliferation of options series and the

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[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 63339 (November 18, 2010), 75 FR 71771 ("Notice").

[4] Commentary .05 also permits strike price intervals of $5 or greater where the strike price is greater than $25 but less than $200; and $2.50 or greater where the strike price is $25 or less.

[5] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

corresponding increase in quotes and market fragmentation. The Commission expects the Exchange to monitor the trading volume associated with the additional options series listed as a result of this proposal and the effect of these additional series on market fragmentation and on the capacity of the Exchange's, OPRA's, and vendors' automated systems.

In addition, the Commission notes that Phlx has represented that it believes the Exchange and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the newly permitted listings.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–Phlx–2010–158) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–441 Filed 1–11–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63660; File No. SR–NYSEArca–2010–124]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending NYSE Arca Options Rule 6.62(h) to Define Stock/Complex Orders, Amending NYSE Arca Options Rule 6.75(g) to Update and Clarify the Priority of Complex Orders, and Amending NYSE Arca Options Rule 6.91 to Establish a Complex Order Auction

January 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 December 30, 2010, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") 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 NYSE Arca. NYSE Arca has submitted the proposed rule change under Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Options Rule 6.62(h) to define Stock/Complex Orders, amend NYSE Arca Options Rule 6.75(g) to update and clarify the priority of Complex Orders, and amend NYSE Arca Options Rule 6.91 to establish a Complex Order Auction.

A copy of this filing is available on the Exchange's Internet Web site at *http://www.nyse.com,* on the Commission's Internet Web site at *http://www.sec.gov,* at the Exchange's principal office, 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 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 III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to update and streamline the rules governing open outcry trading of Complex Orders, including the definition of a Stock/Complex Order, and to adopt new rules to provide for a Complex Order Auction ("COA") in the Electronic Complex Order rules, based on rules recently approved for NYSE Amex LLC ("Amex").[5] The filing also clarifies the minimum trading and quoting increment permissible for Complex Orders.

Stock/Complex Orders

NYSE Arca proposes to amend Rule 6.62(h) to define Stock/Complex Orders as orders for the purchase or sale of a Complex Order coupled with an order to buy or sell a stated number of units of an underlying stock or a security convertible into the underlying stock ("convertible security") representing either (A) the same number of units of the underlying stock or convertible security as are represented by the options leg of the Complex Order with the least number of contracts, or (B) the number of units of the underlying stock necessary to create a delta neutral position, but in no case in a ratio greater than 8 options contracts per unit of trading of the underlying stock or convertible security established for that series by the Clearing Corporation, as represented by the options leg of the Complex Order with the least number of options contracts.

Revision to Complex Order Open Outcry Rules

NYSE Arca proposes to amend Rule 6.75 and Commentary .01 to Rule 6.75. The Exchange proposes to adopt a provision based on NYSE Amex LLC ("Amex") Rule 963NY(d) to describe the priority of Complex Orders in open outcry. The new language does not change the process of executing a Complex Order or alter the priority of quotes and orders; rather, it streamlines and updates the rule text.

Currently, when executing a Complex Order, contra sided complex trading interest in the Trading Crowd has priority over individual orders and quotes in the leg markets at the same net debit or credit price, except when individual Customer orders in the Consolidated Book are present in all of the leg markets. When there are Customer orders present in all legs at the same net debit or credit price, the Complex Order must first trade with the individual Customer orders, and may then trade against complex trading interest in the crowd. Complex Orders trading against contra side complex trading interest in the Trading Crowd must otherwise trade at least one leg at a price that is at least one minimum price variation better than individual Customer orders in the Consolidated Book.[6]

The proposed rule change will not alter these procedures or priorities.

In addition, the Exchange is clarifying that Stock/Complex Orders (involving two or more options legs and a stock leg) may be executed at a net debit or credit price with another OTP Holder

[7] 15 U.S.C. 78s(b)(2).

[8] 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).

[5] *See* Securities Exchange Act Release No. 63558 (December 16, 2010), 75 FR 80553 (December 22, 2010) (Order approving SR–NYSEAmex-2010–100).

[6] Stock/options orders may not trade at the same price as a Customer order in the option leg, unless satisfying the Customer order first, even though the Customer order cannot satisfy all the terms of the Stock/option order.

without giving priority to equivalent bids (offers) in the individual series legs that are represented in the Trading Crowd or Customer limit orders in the Consolidated Book, provided at least one options leg of the order betters the corresponding Customer bid (offer) in the Consolidated Book by at least one minimum trading increment.

NYSE Arca also proposes to delete Commentary.01 to Rule 6.75. The proposed Rule 6.75 (g) describes priority for all Complex Orders and Stock/Option Orders, while Commentary .01 to Rule 6.75 generally only describes the procedures for executing complex transactions; it does not define or describe any execution priority, obligation, or privilege that was not already described in other rules. Additionally, those procedures did not lay out procedures for all complex transactions; it narrowly described only simple Complex Orders with two option legs. The proposed rule change specifically eliminates the description of a "locked book market" in Commentary .01(f). This provision was a description of a narrow circumstance, and was more appropriate when the Public Customer Book was maintained by an Order Book Official. At that time, the Order Book had priority to trade at a given price if it held an order. Paragraph (f) described a situation where the Order Book had orders at all of the prices where a Complex Order might trade, but the orders in the leg markets could not satisfy the terms of the Complex Order. The proposed new language addresses this and similar circumstances in a more clear manner.

Complex Order Auction

Additionally, the Exchange proposes to adopt rules establishing an Electronic Complex Order Auction, based on rules approved for use by NYSE Amex LLC. Amex Rule 980NY(e) describes the process for a Complex Order Request for Responses ("RFR") Auction. NYSE Arca proposes a similar auction under Rule 6.91.

Proposed paragraph (c) of Rule 6.91 will describe the COA process. The proposed rule change will give the Exchange the authority to determine, on a class by class basis, which incoming orders are eligible for a COA based on marketability (defined as a number of ticks from the current market), size, and Complex Order type ("COA-eligible orders").[7]

Upon receiving a COA-eligible order and a request by the OTP Holder representing the order that it be COA'd, the Exchange will send an RFR message to OTP Holders with an interface connection to NYSE Arca that have elected to receive such RFR messages. This RFR message will identify the component series, the size of the COA-eligible order and any contingencies, if applicable. However, the RFR will not identify the side of the market (*i.e.*, whether the COA-eligible order is to buy or sell).

Market Makers with an appointment in the relevant options class, and OTP Holders acting as agent for orders resting at the top of the Consolidated Book in the relevant options series, may electronically submit responses ("RFR Responses"), and modify, but not withdraw, the RFR response at anytime during the request response time interval (the "Response Time Interval"). RFR responses must be in a permissible ratio, and may be expressed on a net price basis in a one cent increment. In addition, RFR Responses will be visible to those who have subscribed to RFRs. The applicable Response Time Interval will be determined by the Exchange on a class by class basis, and, in any event, will not exceed one second. Proposed Rule 6.91(c)(3) also clarifies that the obligations of Rule 6.47A, Order Exposure Requirements—OX, are separate from the duration of the Response Time Interval.

When the Response Time Interval expires, the COA-eligible order will be executed and allocated to the extent it is marketable, or route to the Consolidated Book to the extent it is not marketable. If executed, the rules of trading priority will provide that the COA-eligible order be executed based first on net price, and, at the same price:

(i) *Pre-existing interest in the leg markets:* individual orders and quotes in the leg markets resting in the Consolidated Book prior to the initiation of a COA will have first priority to trade against a COA-eligible order;

(ii) *Customer Complex interest received during the Auction:* Customer Electronic Complex Orders resting in the Consolidated Book before or that are received during, the Response Time Interval and Customer RFR Responses shall, collectively have second priority to trade against a COA-eligible order. The allocation of a COA-eligible order against the Customer Electronic Complex Orders resting in the Consolidated Book shall be on a Size Pro Rata basis;

(iii) *Non-Customer Complex trading interest:* Non-Customer interest, comprised of Electronic Complex Orders resting in the Consolidated Book, Electronic Complex Orders placed in the Consolidated Book during the Response Time Interval, and RFR Responses, will collectively have third priority. The allocation of COA-eligible orders against these contra sided orders will be on a Size Pro Rata basis;

(iv) *Trading Interest that improves the derived Complex Best Bid/Offer:* Individual orders and quotes in the leg markets that cause the derived Complex Best Bid/Offer to be improved during the COA, and which match the best RFR Response and/or Complex Orders received during the Response Time Interval, will be filled after Complex Orders and RFR Responses at the same net price.[8] Allocations within the first category above (individual orders and quotes in the leg markets in the Consolidated Book) shall be in time, with Customer orders having priority ahead of non-customer orders and quotes at the same price. Allocations within the second category above (Customer Electronic Complex Orders resting in the Consolidated Book and Customer RFR responses) shall be based on a Size Pro Rata basis when multiple Customer Complex Orders or RFR responses exist at the same price. Allocations within the third category (non-Customer Electronic Complex Orders in the Consolidated Book and non-Customer RFR responses) shall be based on a Size Pro Rata basis when multiple non-Customer interests exist at the same price. Allocations among the fourth category (individual orders or quotes in the leg markets that cause the derived BBO to be improved) shall be filled on a Customer order/size pro rata basis.

The following is an example of a COA: assume the Exchange's derived complex market, based on individual series orders and quotes in the Consolidated Book, is offered at $1.15 for 20 contracts. In addition, assume a Customer Electronic Complex Order resting in the Consolidated Book is offered at $1.15 for five contracts and two non-Customer orders resting in the Consolidated Book are offered at $1.15 for five contracts each (for a total of 10 contracts). A COA-eligible order is then received to buy the complex strategy 100 times paying $1.15. COA will auction the order. An RFR message is

[7] For example, the Exchange could determine that a complex order with two option legs are eligible for a COA to the extent they are less than two ticks away from the "top of the book," which would be the best price considering the net prices available among Complex Orders in the Consolidated Book and the individual component legs in the Consolidated Book. All pronouncements, including changes hereto, regarding COA eligibility and Response Time Intervals will be announced to OTP Holders via Regulatory Circular.

[8] *See* Securities Exchange Act Release No. 58361 (August 14, 2008), 73 FR 49529 (August 21, 2008) (approving SR–Phlx–2008–50).

sent to subscribers indicating the Complex Order series and the size of 100 contracts (but not the side of the market). The Response Time Interval for submitting RFR Responses will be for no more than one second. Before the conclusion of the Response Time Interval, the following RFR Responses on the other side are received: Customer RFR Responses to sell five at $1.14 and five at $1.15; and non-Customer RFR Responses to sell 15 at a price of $1.13, 35 at a price of $1.14, and 100 at a price of $1.15. The execution of the COA-eligible order will proceed as follows:

- 15 contracts get filled at $1.13 (against non-Customer RFR Responses);
- 40 contracts get filled at $1.14 (five contracts against Customer RFR Responses, then 35 contracts against non-Customer RFR Responses); and
- 45 contracts get filled at $1.15 (20 contracts against the individual series legs in the Consolidated Book, then 10 contracts against Customer Electronic Complex Orders in the Consolidated Book and Customer RFR Responses allocated on a Size Pro Rata basis. The non-Customer interest is allocated on a Size Pro Rata basis as follows: 1 contract ((5/110) x 15) for each of the non-Customer Electronic Complex Orders resting in the Consolidated Book before the COA began, and 13 contracts ((100/110) x 15) against the non-Customer RFR Response).

The proposed rule change also describes the handing of unrelated incoming Electronic Complex Orders that may be received prior to the expiration of the COA. Specifically, the proposed rule change provides the following:

- An incoming Electronic Complex Order received prior to the expiration of the Response Time Interval for a pending COA (the "original COA") that is on the opposite side of the original COA-eligible order and is marketable against the starting price of the original COA-eligible order will be ranked in price time with RFR Responses by account type. The original COA-eligible order will be executed and allocated as described in proposed subparagraph (c)(6) of Rule 6.91. Any remaining balance of either the initiating COA-eligible order or the incoming Electronic Complex order will be placed in the Consolidated Book and ranked as described in subparagraph (a)(1) of Rule 6.91.
- Incoming COA-eligible orders that are received prior to the expiration of the Response Time Interval for the original COA that are on the same side of the market, that are price [sic] equal to the original COA-eligible order will join the COA. A message with the updated size will be published. The new order will be ranked and executed with the initiating COA-eligible order in price time order. Any remaining balance of either the initiating COA-eligible order and/or the incoming Electronic Complex order will be placed in the Consolidated Book and ranked as described in subparagraph (a)(1) of Rule 6.91.
- Incoming COA-eligible orders received during the Response Time Interval for the original COA-eligible order that are on the same side of the market, and that are priced worse than the initiating order, will join the COA. The new order(s) will be ranked and executed with the initiating COA-eligible order in price time order. Any remaining balance of either the initiating COA-eligible order and/or the incoming Electronic Complex order(s) will be placed in the Consolidated Book and ranked as described in subparagraph (a)(1) of Rule 6.91.
- An incoming COA-eligible order that is received prior to the expiration of the Response Time Interval for the original COA that is on the same side of the market and at a better price than the original COA-eligible order will cause the auction to end. The initiating COA-eligible order will be executed in accordance with subparagraph (c)(6). The COA-eligible order that caused the auction to end will then be executed in accordance with subparagraph (c)(6), and any unexecuted portion will either be (i) placed in the Consolidated Book, or (ii) if marketable, initiate another COA.

The Exchange is proposing to amend Commentary .02 to Rule 6.91 to clarify that if the class has been designated as eligible for Complex Order Auctions then at least one leg of the order must trade at a price that is better than the corresponding price of the customer bids or offers in the Consolidated Book for the same series, by at least one cent ($.01).

New Commentary .03 to Rule 6.91 is also proposed to clarify the priority of Stock/Option Orders and Stock/Complex Orders to (a) confirm that the execution of the stock component must be executed consistent with the rules of the stock execution venue; (b) clarify the priority of the option component of a stock option order over bids and offers in the Consolidated Book, but not over Customer orders at the same price in the Consolidated Book; (c) clarify that Stock/Option Orders and Stock/Complex Orders submitted to the Complex Matching Engine will trade first against other Stock/Option or Stock/Complex Orders resting in the Consolidated Book, then against individual orders and quotes on the Exchange, and lastly against orders and quotes subsequently entered by Market Participants; and (d) clarify the priority of the option components of a Stock/Complex Order over bids and offers in the Consolidated Book, unless there are Customer bids and offers in the Consolidated Book on each of the component leg markets.

Proposed Commentary .04 states that a pattern or practice of submitting unrelated orders that cause a COA to conclude early will be deemed conduct inconsistent with just and equitable principles of trade. Dissemination of information related to COA-eligible orders to third parties will also be deemed as conduct inconsistent with just and equitable principles of trade.

Finally, NYSE Arca is proposing the RFR Responses can be modified but not withdrawn at any time before the end of the Response Time Interval. RFR Responses are firm only with respect to COA-eligible orders and RFR Responses received during the Response Time Interval. Any RFR response not accepted to trade either in whole or in a permissible ratio, would expire at the end of the Response Time Interval and would not be eligible to trade with the Consolidated Book.

Complex Order Minimum Increments

NYSE Arca is proposing to revise and clarify the minimum increments that are permissible for bids and offers on Complex Orders. The Exchange believes these changes will facilitate the orderly execution of Complex Orders in open outcry and via the Consolidated Book and the COA mechanism. With respect to minimum increments, currently Rules 6.75 and 6.91 provide that the Complex Orders may generally be expressed in any increments regardless of the minimum increment otherwise appropriate to the individual legs of the order. Thus, for example, a Complex Order could be entered at a net debit or credit price of $1.03 even though the standard minimum increment for the individual series is generally $0.05 or $0.10. The Exchange is proposing to clarify in Rule 6.75 and 6.91 that Complex Orders entered onto the Exchange, and/or resting in the Consolidated Book may be expressed on a net price basis in a multiple of the minimum increment (*i.e.*, $0.01, $0.05, or $0.10, as applicable) or in a one-cent increment as determined by the Exchange on a class-by class basis.

NYSE Arca represents that any Customer Electronic Complex Orders entered to the NYSE Arca System must comply with the order exposure requirements of Rule 6.47A, which

prohibits a User from executing as principal against an order it represents as agent, unless the agency order is first exposed on the Exchange for at least one (1) second, or the User has been bidding or offering on the Exchange for at least one (1) second, prior to receiving an agency order that is excutable against such bid or offer.

NYSE Arca notes that all components of a Complex Order, a Stock/Option Order, or a Stock/Complex Order must be entered into the NYSE Arca System and displayed at a total or net debit or credit, and that all components of a Complex Order, a Stock/Option Order, or a Stock/Complex Order, including the stock component of a Stock/Option Order or Stock/Complex Order, must be traded as a complete package.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act [9] in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, investors will have greater opportunities to manage risk with the Exchange defining Stock/Complex Orders, by the Exchange revising the coverage under Rule 6.75(g) to clarify its applicability, and with the removal of ambiguity by deleting obsolete text in Commentary .01 to Rule 6.75. The proposed adoption of rules governing a Complex Order Auction will facilitate the execution of Complex Orders while providing opportunities for price improvement.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change as one that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Therefore, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11]

NYSE Arca has requested that the Commission waive the 30-day operative delay. Because the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, the Commission grants NYSE Arca's request.[12] As noted above, the proposal is based on Amex rules that the Commission recently approved.[13] The Commission received no comments regarding the Amex's proposal. In addition, the Commission believes that the proposal could enhance competition for Complex Orders on the Exchange by establishing an electronic COA for Complex Orders.

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–NYSEArca–2010–124 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2010–124. 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 NYSE's principal office and on its Internet Web site at *http://www.nyse.com*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSEArca–2010–124 and should be submitted on or before February 2, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Elizabeth M. Murphy,

Secretary.

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[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). Rule 19b–4(f)(6)(iii) also requires an exchange to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing the proposed rule change or such shorter time as the Commission may designate. The Exchange satisfied this requirement.

[12] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] *See* note 5, *supra*.

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63658; File No. SR–Phlx–2011–02]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the $5 Strike Price Program

January 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 January 3, 2011, NASDAQ OMX PHLX LLC ("Phlx" or "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 Commentary .05 to Exchange Rule 1012, Series of Options Open for Trading, specifically to clarify that the Exchange may list option classes designated by other securities exchanges that employ a similar $5 Strike Price Program under their respective rules.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings*, at the principal office of the Exchange, on the Commission's Web site at *www.sec.gov*, 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.

[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 this proposed rule change is to modify Commentary .05 to Exchange Rule 1012 to clarify that the Exchange may list and trade series in intervals of $5 or greater where the strike price is more than $200 in up to five (5) option classes on individual stocks ("$5 Strike Price Program") or the Exchange may list series on any other option classes if those classes are specifically designated by other securities exchanges that employ a similar $5 Strike Price Program under their respective rules.

The Exchange recently filed a proposed rule change to list and trade series in intervals of $5 or greater where the strike price is more than $200 in up to five (5) option classes on individual stocks ("$5 Strike Price Program").[3] The Exchange is now proposing to clarify that the options may be listed and traded in series that are listed by the Exchange or other securities exchanges that employ a similar $5 Strike Price Program, pursuant to the rules of the other securities exchange. Similar reciprocity currently is permitted with the Exchange's $1 Strike Program, $.50 Strike Program and $2.50 Strike Price Program.[4]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[5] in general, and furthers the objectives of Section 6(b)(5) of the Act[6] 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 clarifying that the Exchange may list and trade options in series that are listed by the Exchange or other securities exchanges that employ a similar $5 Strike Price Program will provide its members greater clarity on the types of options that may be listed by the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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[7] and Rule 19b–4(f)(6) thereunder.[8]

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 proposed reciprocity provision is similar to reciprocity provisions in place for other option strike price programs,[9] which have been previously approved by the Commission.[10] Therefore, the Commission designates the proposal operative upon filing.[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.

[3] *See* Securities Exchange Act Release No. 63339 (November 18, 2010), 75 FR 71771 (November 24, 2010) (SR–Phlx–2010–158).

[4] *See* Exchange Rule 1012 at Commentary .05.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 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.

[9] *See* Rule 1012, Commentary .05(a)(i)(A) ($1 Strike Program), Commentary .05(a)(ii) ($0.50 Strike Program), and Commentary .05(b) ($2.50 Strike Program).

[10] *See, e.g.*, Securities Exchange Act Release No. 60694 (September 18, 2009); 74 FR 49048 (September 25, 2009) (SR–Phlx–2009–65) (approving the $0.50 Strike Program, with reciprocity provision).

[11] 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).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an E-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2011–02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2011–02. This file number should be included on the subject line if E-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2011–02 and should be submitted on or before February 2, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–445 Filed 1–11–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63657; File No. SR–NASDAQ–2011–002]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ Stock Market, LLC Relating to the $5 Strike Price Program

January 6, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4[2] thereunder, notice is hereby given that on January 3, 2011 The NASDAQ Stock Market LLC ("NASDAQ" or "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 NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASDAQ Stock Market LLC proposes to amend Chapter IV, Securities Traded on NOM, Section 6, Series of Open Contracts Open for Trading, to clarify that the Exchange may list option classes designated by other securities exchanges that employ a similar $5 Strike Price Program under their respective rules.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaq.cchwallstreet.com*, at the principal office of the Exchange, on the Commission's Web site at *http://www.sec.gov*, 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

The purpose of this proposed rule change is to modify Chapter IV, Section 6(d) to allow the Exchange to clarify that the Exchange may list and trade series in intervals of $5 or greater where the strike price is more than $200 in up to five (5) option classes on individual stocks ("$5 Strike Price Program") or the Exchange may list series on any other option classes if those classes are specifically designated by other securities exchanges that employ a similar $5 Strike Price Program under their respective rules.

The Exchange recently filed a proposed rule change to list and trade series in intervals of $5 or greater where the strike price is more than $200 in up to five (5) option classes on individual stocks ("$5 Strike Price Program").[3] The Exchange is now proposing to clarify that the options may be listed and traded in series that are listed by the Exchange or other securities exchanges that employ a similar $5 Strike Price Program, pursuant to the rules of the other securities exchange. Similar reciprocity currently is permitted with the Exchange's $1 Strike Program, $.50 Strike Program and $2.50 Strike Price Program.[4]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[5] in general, and furthers the objectives of Section 6(b)(5) of the Act[6] 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 clarifying that the Exchange may list and trade options in series that are listed by the Exchange or other securities exchanges that employ a similar $5 Strike Price

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* SR–NASDAQ–2010–001 [sic].

[4] *See* Chapter IV, Section 6.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

Program will provide its members greater clarity on the types of options that may be listed by the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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[7] and Rule 19b–4(f)(6) thereunder.[8]

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 proposed reciprocity provision is similar to reciprocity provisions in place for other option strike price programs,[9] which have been previously approved by the Commission.[10] Therefore, the Commission designates the proposal operative upon filing.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2011–002 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2011–002. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2011–002 and should be submitted on or before February 2, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–444 Filed 1–11–11; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 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.

[9] *See* Chapter IV, Section 6, Supplementary Material .02(a) ($1 Strike Program), .05 ($0.50 Strike Program), and .03(a) ($2.50 Strike Program).

[10] *See, e.g.*, Securities Exchange Act Release No. 60694 (September 18, 2009); 74 FR 49048 (September 25, 2009) (SR–Phlx–2009–65) (approving NASDAQ OMX PHLX's $0.50 Strike Program, with reciprocity provision).

[11] 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).

[12] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, under Section 309 of the Act and Section 107.1900 of the Small Business Administration Rules and Regulations (13 CFR 107.1900) to function as a small business investment company under the Small business Investment Company License No. 08/78–156 issued to The Roser Partnership III, SBIC, L.P., and said license is hereby declared null and void.

United States Small Business Administration.

Sean J. Greene,

AA/Investment.

[FR Doc. 2011–315 Filed 1–11–11; 8:45 am]

BILLING CODE 8025–01–M

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2011–0006]

Occupational Information Development Advisory Panel

AGENCY: Social Security Administration (SSA).

ACTION: Notice of the Charter Renewal for the Occupational Information Development Advisory Panel.

SUMMARY: Notice is hereby given that on January 7, 2011, the Commissioner of Social Security renewed the Charter for the Occupational Information Development Advisory Panel (Panel). This discretionary Panel will provide independent advice and recommendations on plans and activities to create an occupational information system (OIS) tailored specifically for SSA's disability programs and adjudicative needs. SSA requires advice and recommendations on the use of occupational information in SSA's disability programs and the research design of the OIS, including

the development and testing of an OIS content model and taxonomy, work analysis instrumentation, sampling, and data collection and analysis.

Membership includes professionals from academia, private-sector, and public entities (including various Federal agencies, e.g., Department of Labor) with expertise in one or more of the following subject areas: (a) Occupational analysis, design and development of occupational classifications, instrument design, labor market economics, sampling, data collection and analyses; (b) disability evaluation, vocational rehabilitation, forensic vocational assessment, and physical or occupational therapy; (c) occupational or physical rehabilitation medicine, psychiatry, or psychology; and (d) disability claimant advocacy.

The Panel will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act. SSA will file the charter 15 days from the date of the publication of this notice.

For further information contact, Ms. Debra Tidwell-Peters, Designated Federal Officer, Occupational Information Development Advisory Panel, Social Security Administration, 6401 Security Boulevard, 3–E–26 Operations, Baltimore, MD 21235–0001. Fax: 410–597–0825. E-mail to: *OIDAP@ssa.gov*.

Debra Tidwell-Peters,

Designated Federal Officer, Occupational Information Development Advisory Panel.

[FR Doc. 2011–401 Filed 1–11–11; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 7294]

60-Day Notice of Proposed Information Collection: Certificate of Eligibility for Exchange Visitor (J–1) Status; Form DS–2019, OMB No. 1405–0119

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Certificate of Eligibility for Exchange Visitor (J–1) Status.
- *OMB Control Number:* OMB No. 1405–0119.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* Office of Designation—ECA/EC/D.
- *Form Number:* Form DS–2019.
- *Respondents:* U.S. Department of State designated sponsors.
- *Estimated Number of Respondents:* 1,460.
- *Estimated Number of Responses:* 350,000 annually.
- *Average Hours per Response:* 45 minutes.
- *Total Estimated Burden:* 262,500 hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

DATES: The Department will accept comments from the public up to 60 days from January 12, 2011.

ADDRESSES: You may submit comments identified by any of the following methods:

- *Persons with access to the Internet may also view this notice and provide comments by going to the regulations.gov Web site at: http://www.regulations.gov/index.cfm.*
- *Mail (paper, disk, or CD–ROM submissions):* U.S. Department of State, Office of Private Sector Exchange, SA–5, 5th Floor, 2200 C Street, NW., Washington, DC 20522.
- *E-mail: JExchanges@state.gov.*

You must include the DS form number (if applicable), information collection title, and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Stanley S. Colvin, Deputy Assistant Secretary for Private Sector Exchange, U.S. Department of State, SA–5, 5th Floor, 2200 C Street, NW., Washington, DC 20522; or e-mail at *JExchanges@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper administration of the Exchange Visitor Program (J–Visa).
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection: The collection is the continuation of information collected and needed by the Bureau of Educational and Cultural Affairs in administering the Exchange Visitor Program (J–Visa) under the provisions of the Mutual Educational and Cultural Exchange Act, as amended.

Methodology: Access to Form DS–2019 is made available to Department designated sponsors electronically via the Student and Exchange Visitor Information System (SEVIS).

Dated: January 6, 2011.

Stanley S. Colvin,

Deputy Assistant Secretary For Private Sector Exchange, Office of Exchange Coordination, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–501 Filed 1–11–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2010–0354]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 46 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision standard. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these CMV drivers.

DATES: The exemptions are effective January 12, 2011. The exemptions expire on January 12, 2012.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202)-366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments on-line through the Federal Document Management System (FDMS) at *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

Background

On November 26, 2010, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (75 FR 72863). That notice listed 46 applicants' case histories. The 46 individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the Agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the 46 applications on their merits and made a determination to grant exemptions to each of them.

Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision standard, but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely. The 46 exemption applicants listed in this notice are in this category. They are unable to meet the vision standard in one eye for various reasons, including amblyopia, complete loss of vision, macular scarring, keratoconus, cataracts and prosthesis. In most cases, their eye conditions were not recently developed. 32 of the applicants were either born with their vision impairments or have had them since childhood. The 14 individuals who sustained their vision conditions as adults have had them for periods ranging from 3 to 36 years.

Although each applicant has one eye which does not meet the vision standard in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV.

All of these applicants satisfied the testing standards for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a commercial vehicle, with their limited vision, to the satisfaction of the State. While possessing a valid CDL or non-CDL, these 46 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 2 to 43 years. In the past 3 years, 9 of the drivers were involved in crashes or convicted of moving violations in a CMV.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the November 26, 2010 notice (75 FR 72863).

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision standard in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered not only the medical reports about the applicants' vision, but also their driving records and experience with the vision deficiency.

To qualify for an exemption from the vision standard, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at Docket Number FMCSA–1998–3637.

We believe we can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (*See* 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (*See* Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors.

These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (*See* Weber, Donald C., "Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process," Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 46 applicants, four of the applicants were convicted for a moving violation and five of the applicants were involved in a crash. All the applicants achieved a record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision standard in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to the 46 applicants listed in the notice of November 26, 2010 (75 FR 72863).

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the 46 individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

FMCSA received one comment in this proceeding. The comment was considered and discussed below.

The Pennsylvania Department of Transportation stated that it was in favor of granting Federal vision exemptions to Terry L. Anderson and Scott C. Geiter.

Conclusion

Based upon its evaluation of the 46 exemption applications, FMCSA exempts, Charles H. Akers, Jr., David B. Albers, Sr., Kurtis A. Anderson, Terry L. Anderson, Grover h. Baelz, Sammy J. Barada, Kenneth L. Bowers, Jr., Timothy Bradford, Donald G. Brock, Jr., Anthony D. Buck, Cody W. Cook, Marvin R. Daly, Douglas R. Duncan, Douglas K. Esp, Roger C. Evans, II, Jevont D. Fells, Steven C. Fox, Scott C. Geiter, Gary Golson, Donald L. Hamrick, Eugene W. Harnisch, Ronnie E. Henderson, Clinton L. Hines, Jr., Steve D. James, Matthew C. Kalebaugh, Keith A. Larson, Brent E. Lewis, Timothy R. McCullugh, Marcus McMillin, George C. Milks, Daniel R. Murphy, Joseph M. Palmer, Garrick D. Pitts, Gary W. Robey, Jonathan C. Rollings, Preston S. Salisbury, Victor M. Santana, Kevin W. Schaffer, Gerald E. Skalitzky, Allen W. Smith, Robert B. Steinmetz, George A. Teti, Calvin J. Wallace, II, David W. Ward, Ralph W. York, Richard L. Zacher from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)).

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: December 30, 2010.

Larry W. Minor,

Associate Administrator, Office of Policy.

[FR Doc. 2011–241 Filed 1–11–11; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from Saul Ewing LLP on behalf of Trinity Industries, Inc. (WB605–7–09/20/10) for permission to use certain data from the Board's 2009 Carload Waybill Sample. A copy of this request may be obtained from the Office of Economics.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Scott Decker, (202) 245–0330

Andrea Pope-Matheson,

Clearance Clerk.

[FR Doc. 2011–450 Filed 1–11–11; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Designation Pursuant to Executive Order 13396 of February 7, 2006, "Blocking Property of Certain Persons Contributing to the Conflict in Côte d'Ivoire"

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing the name of five individuals whose property and interests in property are blocked pursuant to Executive Order 13396 of February 7, 2006, "Blocking Property of Certain Persons Contributing to the Conflict in Côte d'Ivoire" (the "Order").

DATES: The designation by the Director of OFAC of the five individuals identified in this notice, pursuant to Executive Order 13396, is effective on January 6, 2010.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) via facsimile through a 24-hour fax-on demand service, *tel.:* (202) 622–0077.

Background

On February 7, 2006, the President issued Executive Order 13396 pursuant to, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*). In the Order, the President determined that the situation in or in relation to Côte d'Ivoire constitutes an unusual and extraordinary threat to the national security and foreign policy of the United States and declared a national emergency to deal with that threat. The President identified three individuals as subject to the economic sanctions in the Annex to the Order.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in, or hereafter come within, the United States or within the possession or control of United States persons, of the persons listed in the Annex to the Order, as well as those persons determined by the Secretary of the Treasury, after consultation with the Secretary of State, to satisfy any of the criteria set forth in subparagraphs (a)(ii)(A)–(a)(ii)(F) of Section 1.

On January 6, 2010, the Director of OFAC, after consultation with the Department of State, designated, pursuant to one or more of the criteria set forth in subparagraphs (a)(ii)(A)–(a)(ii)(F) of Section 1 of the Order, the following individuals whose property and interests in the property are blocked pursuant to the Order:

1. GBAGBO, Laurent (a.k.a. GBAGBO, Laurent Koudou), Abidjan, Cote d Ivoire; DOB 31 May 1945; POB Gagnoa, Cote d Ivoire (individual) [COTED]

2. GBAGBO, Simone (a.k.a. GBAGBO, Simone Ehivet), Abidjan, Cote d Ivoire; DOB 20 Jun 1949; POB Moossou, Grand-Bassam, Cote d Ivoire (individual) [COTED]

3. TAGRO, Desire (a.k.a. TAGRO, Assegnini Desire); DOB 27 Jan 1959; POB Issia, Cote d Ivoire (individual) [COTED]

4. N'GUESSAN, Pascal Affi (a.k.a. NGUESSAN, Affi); DOB 1953; POB Bongouanou, Cote d Ivoire (individual) [COTED]

5. DJEDJE, Alcide Ilahiri (a.k.a. DJEDJE, Ilahiri Alcide; a.k.a. ILAHIRI, Alcide Djedje), DOB 1956 (individual) [COTED]

Dated: January 6, 2010.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2011–525 Filed 1–11–11; 8:45 am]

BILLING CODE 4811–45–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 comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Monday, February 24, 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 Monday, February 24, 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 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: January 6, 2011.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–413 Filed 1–11–11; 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

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 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, February 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 will be held Wednesday, February 23, 2011, at 9:00 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 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: January 5, 2011.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–415 Filed 1–11–11; 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, February 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, February 3, 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 Audrey Y. 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: January 5, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–422 Filed 1–11–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 4 Taxpayer Advocacy Panel (Including the States of Illinois, Indiana, Kentucky, Michigan, Ohio, and Wisconsin)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 4 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 Tuesday, February 15, 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 a meeting of the Area 4 Taxpayer Advocacy Panel will be held Tuesday, February 15, 2011, at 1 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 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: January 5, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–403 Filed 1–11–11; 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, February 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, February 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: January 5, 2011.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–417 Filed 1–11–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 6 Taxpayer Advooacy 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 Thursday, February 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 Thursday, February 2, 2011, at 1 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 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: January 5, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–411 Filed 1–11–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Alabama, Georgia, Florida, Louisiana, Mississippi, Tennessee, and Puerto Rico.

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 3 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 Wednesday, February 2, 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 Area 3 Taxpayer Advocacy Panel will be held Wednesday, February 2, 2011, at 2:30 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 post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: January 5, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–409 Filed 1–11–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 5 Taxpayer Advocacy Panel (including the states of Arizona, Arkansas, Colorado, Kansas, New Mexico, Missouri, Oklahoma, and Texas)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 5 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, February 17, 2011.

FOR FURTHER INFORMATION CONTACT: Patricia Robb 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 a meeting of the Area 5 Taxpayer Advocacy Panel will be held Thursday, February 17, 2011, at 11 a.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 Patricia Robb. For more information please contact Ms. Robb 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: January 5, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–407 Filed 1–11–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 2 Taxpayer Advocacy Panel (Including the States of Delaware, North Carolina, South Carolina, Maryland, Pennsylvania, Virginia, West Virginia and the District of Columbia)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 2 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 Wednesday, February 16, 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 Area 2 Taxpayer Advocacy Panel will be held Wednesday, February 16, 2011, at 2:30 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 Audrey 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: January 5, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–406 Filed 1–11–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 1 Taxpayer Advocacy Panel (Including the States of New York, New Jersey, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont and Maine)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 1 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 Tuesday, February 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 Area 1 Taxpayer Advocacy Panel will be held Tuesday, February 8, 2011, at 10 a.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 Marisa 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 contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: January 5, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–404 Filed 1–11–11; 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, February 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, February 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 Marisa 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: January 5, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–402 Filed 1–11–11; 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

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 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, February 22, 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 will be held Tuesday, February 22, 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, 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: January 5, 2010.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–418 Filed 1–11–11; 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 comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, February 8, 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, February 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 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: January 5, 2011.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel

[FR Doc. 2011–419 Filed 1–11–11; 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 Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center 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, February 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 Committee will be held Tuesday, February 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 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: January 5, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–420 Filed 1–11–11; 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 Monday, February 28, 2011.

FOR FURTHER INFORMATION CONTACT: Marianne Ayala 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, February 28, 2011, at 2:00 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 Ayala. For more information, please contact Ms. Ayala 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: January 5, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–421 Filed 1–11–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Identity Theft Red Flags and Address Discrepancies Under the Fair and Accurate Credit Transactions Act of 2003

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The proposed information collection request (ICR) described below has been submitted to the Office of Management and Budget (OMB) for review and approval, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before February 11, 2011. A copy of this ICR, with applicable supporting documentation, can be obtained from RegInfo.gov at *http://www.reginfo.gov/public/do/PRAMain.*

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS at these addresses: Office of Information and Regulatory Affairs, Attention: Desk Officer for OTS, U.S. Office of Management and Budget, 725 17th Street, NW., Room 10235, Washington, DC 20503, or by fax to (202) 393–6974; and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202) 906–6518, or by e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., Washington, DC 20552 by appointment. To make an appointment, call (202) 906–5922, send an e-mail to public.info@ots.treas.gov, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: For further information or to obtain a copy of the submission to OMB, please contact Ira L. Mills at *ira.mills@ots.treas.gov,* or call (202) 906–6531, or facsimile number (202) 906–6518, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Title of Proposal: Identity Theft Red Flags and Address Discrepancies under the Fair and Accurate Credit Transactions Act of 2003.

OMB Number: 1550–0113.

Form Number: N/A.

Description: The Fair and Accurate Credit Transactions Act of 2003 (FACT

Act) Section 114 amends section 615 of the Fair Credit Reporting Act (FCRA) to require the OTS, Office of the Comptroller of the Currency, Federal Reserve Board, Federal Deposit Insurance Corporation, National Credit Union Administration, and Federal Trade Commission (Agencies) to issue jointly guidelines for financial institutions and creditors regarding identity theft with respect to their account holders and customers. In developing the guidelines, the Agencies must identify patterns, practices, and specific forms of activity that indicate the possible existence of identity theft. The regulations require each financial institution and creditor to establish reasonable policies and procedures for implementing the guidelines to identify possible risks to account holders or customers or to the safety and soundness of the institution or creditor.

The FACT Act Section 315 amends section 605 of the FCRA to require the Agencies to issue joint regulations providing guidance regarding reasonable policies and procedures that a user of consumer reports must employ when a user receives a notice of address discrepancy from a consumer reporting agency (CRA). The regulations describe reasonable policies and procedures for users of consumer reports to enable a user to form a reasonable belief that it knows the identity of the person for whom it has obtained a consumer report, and reconcile the address of the consumer with the CRA, if the user establishes a continuing relationship with the consumer and regularly and in the ordinary course of business furnishes information to the CRA.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 739.

Estimated Frequency of Response: On occasion.

Estimated Total Burden: 11,824 hours.

Clearance Officer: Ira L. Mills, (202) 906–6531, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Dated: January 6, 2011.

Ira L. Mills,

Paperwork Clearance Officer, Office of Chief Counsel, Office of Thrift Supervision.

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BILLING CODE 6720–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (VA Form 10–0512)]

Agency Information Collection: Emergency Submission for OMB Review; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501–3521), this notice announces that the United States Department of Veterans Affairs (VA), will submit to the Office of Management and Budget (OMB) the following emergency proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. 3507(j)(1)). An emergency focus group clearance is being requested in regards to the Veterans' Suicide Prevention Program.

DATES: Comments must be submitted on or before January 26, 2011.

For Further Information or a Copy of the Submission Contact: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 461–0966 or e-mail. Please refer to "OMB Control No. 2900–New (VA Form 10–0512).

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316 or FAX (202) 395–6974. Please refer to "2900–New (VA Form 10–0512).

SUPPLEMENTARY INFORMATION:

Title: Veterans' Suicide Prevention Program.

OMB Control Number: 2900–New (VA Form 10–0512).

Type of Review: New collection.

Abstract: VA is taking decisive action to prevent Veteran death by suicide. The Department will proactively partner with Veterans and their families; federal, state, local, and tribal governments; community organizations; and other stakeholders to reach out, engender trust, reduce stigma, and encourage our Nation's heroes to apply for the benefits and services they have earned. VA must also reach out to Veterans who are experiencing mental health crises and provide confident and trustworthy counseling.

To be successful, the Department must take systematic steps when offering assistance with programs, services, and benefits. Outreach activities must be research-based, data-driven, audience targeted, results-oriented, and governed by the basic tenets of effective communication and strategic outreach.

To prevent suicide and save one life at a time, 18 lives per day, the Department must act now and reach out to these populations and their influencers; however, to truly make a difference, it can't just reach out, VA must employ sound and proven outreach strategies which are evidence-based and include messaging which has been tested and focused for specific audiences. To achieve these steps, the Department will conduct focus groups with Veterans and their families, community organizations, and other important and influential stakeholders. Therefore, the Veterans Health Administration respectfully requests an emergency OMB clearance to perform focus group activities and collect information to support outreach efforts in reaching this critical audience and the people who they trust.

Affected Public: Individuals and households.

Estimated Total Annual Burden: 150 hours.

Estimated Average Burden per Respondent: 90 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 100.

Dated: January 7, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst Director, Enterprise Records Service.

[FR Doc. 2011–482 Filed 1–11–11; 8:45 am]

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Part II

Department of Transportation

Federal Railroad Administration

49 CFR Parts 229 and 238
Locomotive Safety Standards; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 229 and 238

[Docket No. FR–2009–0095; Notice No. 1]

RIN 2130–AC16

Locomotive Safety Standards

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: FRA proposes to revise the existing regulations containing Railroad Locomotive Safety Standards. The proposed revisions would update, consolidate, and clarify the existing regulations. The proposal incorporates existing industry and engineering best practices related to locomotives and locomotive electronics. This includes the development of a safety analysis for new locomotive electronic systems. FRA believes this proposal will modernize and improve its safety regulatory program related to locomotives.

DATES: *Comments:* Written comments must be received by March 14, 2011. Comments received after that date will be considered to the extent possible without incurring additional expenses or delays.

Hearing: FRA anticipates being able to complete this rulemaking without a public, oral hearing. However, if FRA receives a specific request for a public, oral hearing prior to February 11, 2011, one will be scheduled and FRA will publish a supplemental notice in the **Federal Register** to inform interested parties of the date, time, and location of any such hearing.

ADDRESSES: Comments: Comments related to Docket No. FRA–2009–0095, may be submitted by any of the following methods: *Web Site:* Federal eRulemaking Portal, *http://www.regulations.gov*. Follow the online instructions for submitting comments.

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

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to *http://www.regulation.gov* including any personal information. *Please see* the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments or materials.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to Room W12–140 on the Ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: George Scerbo, Office of Safety Assurance and Compliance, Motive Power & Equipment Division, RRS–14, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Washington, DC (telephone 202–493–6249), or Michael Masci, Trial Attorney, Office of Chief Counsel, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Washington, DC (telephone 202–493–6037).

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

FRA has broad statutory authority to regulate railroad safety. The Federal railroad safety laws (formerly the Locomotive Boiler Inspection Act at 45 U.S.C. 22–34, repealed and recodified at 49 U.S.C. 20701–20703) prohibit the use of unsafe locomotives and authorize FRA to issue standards for locomotive maintenance and testing. In order to further FRA's ability to respond effectively to contemporary safety problems and hazards as they arise in the railroad industry, Congress enacted the Federal Railroad Safety Act of 1970 (Safety Act) (formerly 45 U.S.C. 421, 431 *et seq.*, now found primarily in chapter 201 of Title 49). The Safety Act grants the Secretary of Transportation rulemaking authority over all areas of railroad safety (49 U.S.C. 20103(a)) and confers all powers necessary to detect and penalize violations of any rail safety law. This authority was subsequently delegated to the FRA Administrator. (49 CFR 1.49) Until July 5, 1994, the Federal railroad safety statutes existed as separate acts found primarily in title 45 of the United States Code. On that date, all of the acts were repealed, and their provisions were recodified into title 49 of the United States Code. All references to parts and sections in this document shall be to parts and sections located in Title 49 of the Code of Federal Regulations.

Pursuant to its general statutory rulemaking authority, FRA promulgates and enforces rules as part of a comprehensive regulatory program to address the safety of, inter alia, railroad track, signal systems, communications, rolling stock, operating practices, passenger train emergency preparedness, alcohol and drug testing, locomotive engineer certification, and workplace safety. In 1980, FRA issued the majority of the regulatory provisions currently found at 49 CFR part 229 ("part 229") addressing various locomotive related topics including: Inspections and tests; safety requirements for brake, draft, suspension, and electrical systems, and locomotive cabs; and locomotive cab equipment. Since 1980, various provisions currently contained in part 229 have been added or revised on an ad hoc basis to address specific safety concerns or in response to specific statutory mandates.

Topics for new regulation typically arise from several sources. FRA continually reviews its regulations and revises them as needed to address emerging technology, changing operational realities, and to bolster existing standards as new safety concerns are identified. It is also common for the railroad industry to introduce regulatory issues through FRA's waiver process. Several of FRA's proposed requirements have been partially or previously addressed through FRA's waiver process. As detailed in part 211, FRA's Railroad Safety Board (Safety Board) reviews, and approves or denies, waiver petitions submitted by railroads and other parties subject to the regulations. Petitions granted by the Safety Board can be utilized only by the petitioning party. By incorporating existing relevant regulatory waivers into part 229, FRA intends to extend the reach of the regulatory flexibilities permitted under those waivers. Although, FRA is proposing to alter a number of regulatory requirements, the comprehensive safety regulatory structure would remain.

The requirement that a locomotive be safe to operate in the service in which it is placed remains the cornerstone of Federal regulation. Title 49 U.S.C. 20701 provides that "[a] railroad carrier may use or allow to be used a locomotive or tender on its railroad line only when the locomotive or tender and its parts and appurtenances: (1) Are in proper condition and safe to operate

without unnecessary danger of personal injury; (2) have been inspected as required under this chapter and regulations prescribed by the Secretary of Transportation under this chapter; and (3) can withstand every test prescribed by the Secretary under this chapter."

The statute is extremely broad in scope and makes clear that each railroad is responsible for ensuring that locomotives used on its line are safe. Even the extensive requirements of part 229 are not intended to be exhaustive in scope, and with or without that regulatory structure the railroads remain directly responsible for finding and correcting all hazardous conditions. For example, even without these proposed regulations, a railroad would be responsible for repairing an inoperative alerter and an improperly functioning remote control transmitter, if the locomotive is equipped with these devices.

On July 12, 2004, the Association of American Railroads (AAR), on behalf of itself and its member railroads, petitioned the FRA to delete the requirement contained in 49 CFR 229.131 related to locomotive sanders. The petition and supporting documentation asserted that contrary to popular belief, depositing sand on the rail in front of the locomotive wheels will not have any significant influence on the emergency stopping distance of a train. While contemplating the petition, FRA and interested industry members began identifying other issues related to the locomotive safety standards. The purpose of this task was to develop information so that FRA could potentially address the issues through the Railroad Safety Advisory Committee (RSAC).

The locomotive sanders final rule was published on October 19, 2007 (72 *FR* 59216). FRA continued to utilize the RSAC process to address additional locomotive safety issues. On September 10, 2009, after a series of detailed discussions, the RSAC approved and provided recommendations on a wide range of locomotive safety issues including, locomotive brake maintenance, pilot height, headlight operation, danger markings, and locomotive electronics. FRA is generally proposing the consensus rule text for these issues with minor clarifying modifications. The RSAC was unable to reach consensus on the issues related to remote control locomotives, cab temperature, and locomotive alerters. Based on its consideration of the information and views provided by the RSAC Locomotive Safety Standards Working Group, FRA is also proposing rule text related to the non-consensus items.

II. RSAC Overview

In March 1996, FRA established the RSAC, which provides a forum for developing consensus recommendations on rulemakings and other safety program issues. The Committee includes representation from interested parties, including railroads, labor organizations, suppliers and manufacturers, and other interested parties. A list of member groups follows:

American Association of Private Railroad Car Owners (AARPCO)
American Association of State Highway & Transportation Officials (AASHTO)
American Public Transportation Association (APTA)
American Short Line and Regional Railroad Association (ASLRRA)
American Train Dispatchers Association (ATDA)
Amtrak
Association of American Railroads (AAR)
Association of Railway Museums (ARM)
Association of State Rail Safety Managers (ASRSM)
Brotherhood of Locomotive Engineers and Trainmen (BLET)
Brotherhood of Maintenance of Way Employes Division (BMWED)
Brotherhood of Railroad Signalmen (BRS)
Federal Transit Administration (FTA)*
High Speed Ground Transportation Association (HSGTA)
International Association of Machinists and Aerospace Workers
International Brotherhood of Electrical Workers (IBEW)
Labor Council for Latin American Advancement (LCLAA)*
League of Railway Industry Women*
National Association of Railroad Passengers (NARP)
National Association of Railway Business Women*
National Conference of Firemen & Oilers
National Railroad Construction and Maintenance Association
National Railroad Passenger Corporation (Amtrak)
National Transportation Safety Board (NTSB)*
Railway Supply Institute (RSI)
Safe Travel America (STA)
Secretaria de Communicaciones y Transporte*
Sheet Metal Workers International Association (SMWIA)
Tourist Railway Association Inc.
Transport Canada*
Transport Workers Union of America (TWU)
Transportation Communications International Union/BRC (TCIU/BRC)
United Transportation Union (UTU)
*Indicates associate membership.

When appropriate, FRA assigns a task to the RSAC, and after consideration and debate, the RSAC may accept or reject the task. If accepted, the RSAC establishes a working group that possesses the appropriate expertise and representation of interests to develop recommendations to FRA for action on the task. These recommendations are developed by consensus. A working group may establish one or more task forces to develop facts and options on a particular aspect of a given task. The task force then provides that information to the working group for consideration. If a working group comes to unanimous consensus on recommendations for action, the package is presented to the RSAC for a vote. If the proposal is accepted by a simple majority of the RSAC, the proposal is formally recommended to FRA. FRA then determines what action to take on the recommendation. Because FRA staff has played an active role at the working group level in discussing the issues and options and in drafting the language of the consensus proposal, FRA is often favorably inclined toward the RSAC recommendation. However, FRA is in no way bound to follow the recommendation and the agency exercises its independent judgment on whether the recommended rule achieves the agency's regulatory goal, is soundly supported, and is in accordance with policy and legal requirements. Often, FRA varies in some respects from the RSAC recommendation in developing the actual regulatory proposal. If the working group or the RSAC is unable to reach consensus on recommendations for action, FRA moves ahead to resolve the issue through conventional practices including traditional rulemaking proceedings.

III. Proceedings to Date

On February 22, 2006, FRA presented, and the RSAC accepted, the task of reviewing existing locomotive safety needs and recommending consideration of specific actions useful to advance the safety of rail operations. The RSAC established the Locomotive Safety Standards Working Group (Working Group) to handle this task and develop recommendations for the full RSAC to consider. Members of the Working Group, in addition to FRA, included the following:

APTA
ASLRRA
Amtrak
AAR
ASRSM
BLET
BMWE
BRS
BNSF Railway Company (BNSF)
California Department of Transportation
Canadian National Railway (CN)
Canadian Pacific Railway (CP)
Conrail
CSX Transportation (CSXT)

Florida East Coast Railroad
General Electric (GE)
Genesee & Wyoming Inc.
International Association of Machinists and Aerospace Workers
IBEW
Kansas City Southern Railway (KCS)
Long Island Rail Road
Metro-North Railroad
MTA Long Island
National Conference of Firemen and Oilers
Norfolk Southern Corporation (NS)
Public Service Commission of West Virginia
Rail America, Inc.
Southeastern Pennsylvania Transportation Agency
SMWIA
STV, Inc.
Tourist Railway Association Inc.
Transport Canada
Union Pacific Railroad (UP)
UTU
Volpe Center
Wabtec Corporation
Watco Companies

The task statement approved by the full RSAC sought immediate action from the Working Group regarding the need for, and usefulness of, the existing regulation related to locomotive sanders. The task statement established a target date of 90 days for the Working Group to report back to the RSAC with recommendations to revise the existing regulatory sander provision. The Working Group conducted two meetings that focused almost exclusively on the sander requirement. The meetings were held on May 8–10, 2006, in St. Louis, Missouri, and on August 9–10, 2006, in Fort Worth, Texas. Minutes of these meetings have been made part of the docket in this proceeding. After broad and meaningful discussion related to the potential safety and operational benefits provided by equipping locomotives with operative sanders, the Working Group reached consensus on a recommendation for the full RSAC.

On September 21, 2006, the full RSAC unanimously adopted the Working Group's recommendation on locomotive sanders as its recommendation to FRA. The next twelve Working Group meeting addressed a wide range of locomotive safety issues. The meetings were held at the following locations on the following days:

Kansas City, MS, October 30 & 31, 2006;
Raleigh, NC, January 9 & 10, 2007;
Orlando, FL, March 6 & 7, 2007;
Chicago, IL, June 6 & 7, 2007;
Las Vegas, NV, September 18 & 19, 2007;
New Orleans, LA, November 27 & 28, 2007;
Fort Lauderdale, FL, February 5 & 6, 2008;
Grapevine, TX, May 20 & 21, 2008;
Silver Spring, MD, August 5 & 6, 2008;
Overland Park, KS, October 22 & 23, 2008;
Washington, D.C., January 6 & 7, 2009; and
Arlington, VA, April 15 & 16, 2009.

At the above listed meetings, the Working Group successfully reached consensus on the following locomotive safety issues: Locomotive brake maintenance, pilot height, headlight operation, danger markings placement, load meter settings, reorganization of steam generator requirements, and the establishment locomotive electronics requirements. Throughout the preamble discussion of this proposal, FRA refers to comments, views, suggestions, or recommendations made by members of the Working Group. When using this terminology, FRA is referring to views, statements, discussions, or positions identified or contained in the minutes of the Working Group meetings. These documents have been made part of the docket in this proceeding and are available for public inspection as discussed in the **ADDRESSES** portion of this document. These points are discussed to show the origin of certain issues and the course of discussions on those issues at the task force or working group level. We believe this helps illuminate factors FRA has weighed in making its regulatory decisions, and the logic behind those decisions.

The reader should keep in mind, of course, that only the full RSAC makes recommendations to FRA, and it is the consensus recommendation of the full RSAC on which FRA is primarily acting in this proceeding. As discussed above, the Working Group reported its findings and recommendations to the RSAC at its September 10, 2009 meeting. The RSAC approved the recommended consensus regulatory text proposed by the Working Group, which accounts for the majority of this NPRM. The specific regulatory language recommended by the RSAC was amended slightly for clarity and consistency. FRA independently developed proposals related to remote control locomotives, alerters, and locomotive cab temperature, issues that the Working Group discussed, but ultimately did not reach consensus.

IV. General Overview of Proposed Requirements

Trends in locomotive operation, concern about the safe design of electronics, technology advances, and experience applying Federal regulations provide the main impetus for the proposed revisions to FRA's existing standards related to locomotive safety. An overview of some of the major areas addressed in this proposal is provided below.

A. Remote Control Locomotives

Remote control devices have been used to operate locomotives at various locations in the United States for many years, primarily within yards and certain industrial sites. Railroads in Canada have extensively used remote control locomotives for more than a decade. FRA began investigating remote control operations in 1994 and held its first public hearing on the subject in mid-1990s to gather information and examine the safety issues relating to this new technology. On July 19, 2000, FRA conducted a technical conference in which interested parties, including rail unions, remote control systems suppliers, and railroad representatives, shared their views and described their experiences with remote control operations.

On February 14, 2001, FRA published a Safety Advisory in which FRA issued recommended guidelines for conducting remote control locomotive operations. *See* 66 FR 10340, Notice of Safety Advisory 2001–01, Docket No. FRA–2000–7325. By issuing these recommendations, FRA sought to identify a set of "best practices" to guide the rail industry when implementing this technology. As this was an emerging technology, FRA believed the approach served the railroad industry by providing flexibility to both manufacturers designing the equipment and to railroads using the technology in their operations, while reinforcing the importance of complying with all existing railroad safety regulations. All of the major railroads have adopted the recommendations contained in the advisory, with only slight modifications to suit their individual operations.

In the Safety Advisory, FRA addressed the application and enforcement of the Federal regulations to remote control locomotives. FRA discussed the existing Federal locomotive inspection requirements and the application of those broad requirements to remote control locomotive technology. The Safety Advisory explains that: "although compliance with this Safety Advisory is voluntary, nothing in this Safety Advisory is meant to relieve a railroad from compliance with all existing railroad safety regulations [and] [t]herefore, when procedures required by regulation are cited in this Safety Advisory, compliance is mandatory." *Id.* at 10343. For example, the Safety Advisory states that the remote control locomotive "system must be included as part of the calendar day inspection required by section 229.21, since this equipment becomes an appurtenance to the locomotive." *Id.* at 10344. Another example of a mandatory requirement mentioned in the Safety Advisory is that the remote control locomotive "system components that interface with the

mechanical devices of the locomotive, e.g., air pressure monitoring devices, pressure switches, speed sensors, etc., should be inspected and calibrated as often as necessary, but not less than the locomotive's periodic (92-day) inspection." *Id.; see also* 49 CFR 229.23. Thus, the Safety Advisory made clear that the existing Federal regulations require inspection of the remote control locomotive equipment.

The Safety Advisory also addressed the application of various requirements related to the operators of remote control locomotives. The Safety Advisory states that "each person operating an RCL [remote control locomotive] must be certified and qualified in accordance with part 240 [FRA's locomotive engineer rule] if conventional operation of a locomotive under the same circumstances would require certification under that regulation." *Id.* at 10344. In 2006, FRA codified additional requirements to address specific operational issues such as situational awareness. *See* 71 FR 60372 (2006).

During several productive meetings, the Working Group identified many areas of agreement regarding the regulation of remote control locomotive equipment. On issues that produced disagreement, FRA gathered useful information. Informed by the Working Group discussions, this proposal would codify the industry's best practices related to the use and operation of remote control locomotives.

B. Electronic Record-Keeping

The development and improved capability of electronic record-keeping systems has led to the potential for safe electronic maintenance of records required by part 229. Since April 3, 2002, FRA has granted a series of waivers permitting electronic record-keeping with certain conditions intended to ensure the safety, security and accessibility of such systems. *See* FRA–2001–11014. Based on the information gathered under the experiences of utilizing the electronic records permitted under these existing waivers, the Working Group discussed, and agreed to, generally applicable standards for electronic record-keeping systems.

C. Brake Maintenance

Advances in technology have increased the longevity of locomotive brake system components. In conjunction with several railroads and the AAR, FRA has monitored the performance of new brake systems since the Locomotive Safety Standards regulation was first published in 1980. *See* 45 FR 21092. The proposed revisions to locomotive air brake maintenance are based on this extensive history of study and testing. Over the last several decades, FRA has granted several conditional waivers extending the air brake cleaning, repair, and test requirements of §§ 229.27 and 229.29. These extensions were designed to accommodate testing of the reliability of electronic brake systems and other brake system components, with the intent of moving toward performance based test criterion with components being replaced or repaired based upon their reliability.

In 1981, FRA granted a test waiver (H–80–7) to eight railroads, permitting them to extend the annual and biennial testing requirements contained in §§ 229.27 and 229.29, in order to conduct a study of the safe service life and reliability of the locomotive brake components. On January 29, 1985, FRA expanded the waiver to permit all railroads to inspect the 26–L type brake equipment on a triennial basis. In the 1990's, the Canadian Pacific Railroad (CP) and the Canadian National Railroad (CN) petitioned the FRA to allow them to operate locomotives into the United States that received periodic attention every four years. The requests were based on a decision by Transport Canada to institute a four-year inspection program following a thorough test program in Canada. In November 2000, FRA granted conditional waivers to both the CN and CP, extending the testing interval to four years for Canadian-based locomotives equipped with 26–L type brake systems and air dryers. The waiver also requires all air brake filtering devices to be changed annually and the air compressor to be overhauled not less than every six years. In 2005, this waiver was extended industry-wide. *See* FRA–2005–21325.

In 2009, AAR petitioned for a waiver that would permit four year testing and maintenance intervals for locomotives that are equipped with 26–L type brake equipment and not equipped with air dryers. The petition assumed that the testing and maintenance intervals that are appropriate for locomotives equipped with air dryers are also appropriate for locomotives without air dryers. FRA denied the request, but granted a limited test program to determine whether the addition of operative air dryers on a locomotive merits different maintenance and testing requirements. FRA recognizes that the results of the test plan may indicate that locomotives that are not equipped with air dryers merit the same treatment as locomotives that operate without air dryers. FRA solicits comments on this issue.

FRA also requests comments on what should constitute an operative air dryer and how a locomotive with an inoperative air dryer should be properly handled. FRA believes that these issues are essential to enforcement of a requirement that includes the use of operative air dryers. The proposed rule text does not address this issue. It is not clear how many days an air dryer would need to stop performing to allow contaminants in the brake line to adversely affect the brake valves to the extent that the air dryer is no longer considered operative. It is also unclear how many days an air dryer could be inoperative before it needs to be repaired in order to preserve the four year testing and maintenance schedule. FRA believes that one reasonable approach would be to permit a locomotive with an inoperative air dryer to run to the next periodic inspection to be repaired.

The New York Air Brake Corporation (NYAB) sought by waiver, and was granted, an extension of the cleaning, repairing, and testing requirements for pneumatic components of the CCBI and CCBII brake systems (FRA–2000–7367, formerly H–95–3), and then modification of that waiver to include its new CCB–26 electronic airbrake system. The initial waiver, which was first granted on September 13, 1996, extended the interval for cleaning, repairing, and testing pneumatic components of the NYAB Computer Controlled Brake (CCB, now referred to as CCB–I) locomotive air brake system under 49 CFR 229.27(a)(2) and 49 CFR 229.29(a) from 736 days to five years. The waiver was modified to include NYAB's CCB–II electronic air brake system on August 20, 1998.

To confirm that the extended brake maintenance interval did not have a negative effect on safety, FRA required quarterly reports listing air brake failures, both pneumatic and electrical, of all locomotives operating under the waiver including: Locomotive reporting marks; and the cause and resolution of the problem. All verified failures were required to be reported to FRA prior to disassembly, so that NYAB, the railroad, and FRA could jointly witness the disassembly of the failed component to determine the cause. The last quarterly submission to FRA listed 1,889 CCBI and 1,805 CCBII equipped locomotives in the United States, all of which were operating at high levels of reliability and demonstrated safety. All past tests and teardown inspections confirm the safety and reliability of the five year interval.

Based on successful performance of the two NYAB electronic air brake systems under the conditions of the 1996 and 1998 waivers, the waiver was extended for another five years on September 10, 2001, and the conditions of the waiver were modified on September 22, 2003. NYAB described the new CCB–26 electronic air brake system as an adaptation of the CCB–II system designed to be used on locomotives without integrated cab electronics. It used many of the same sub-assemblies of pneumatic valves, electronic controls and software (referred to as line replaceable units or LRUs) as the CCB–II. Some changes were made to simplify the system while maintaining or increasing the level of safety. For example, the penalty brake interface was changed to mimic the 26L system interface, allowing for a fully pneumatic penalty brake application. Also, the brake cylinder pilot pressure development has been simplified from an electronic control to a fully pneumatic version based on proven components.

Much of the software and diagnostic logic which detects critical failures and takes appropriate action to effect a safe stop has been carried over from CCB–II. Overall, NYAB characterized the CCB–26 as being more similar to CCB–II than CCB–II is to CCB–I. As a final check on the performance of the CCB–26 system, it was included in the existing NYAB failure monitoring and recording systems. For the reasons above, FRA extended the waiver of compliance with brake maintenance requirements to locomotives equipped with CCB–26 brake systems.

Similarly, WABCO Locomotive Products (WABCO), a Wabtec company, sought and was granted an extension of the cleaning, repairing, and testing requirements for pneumatic components of the EPIC brake systems (FRA–2002–13397, formerly H–92–3), and then modification of that waiver to include its new FastBrake line of electronic airbrake systems. The initial waiver conditionally extended to five years the clean, repair and test intervals for certain pneumatic air brake components contained in §§ 229.27(a)(2) and 229.29(a) for WABCO's EPIC electronic air brake equipment. WABCO complied with all of the conditions of the waiver. Specifically, WABCO provided regular reports to FRA including summaries of locomotives equipped with EPIC brake systems and all pneumatic and electronic failures. FRA participated in two joint teardown inspections of EPIC equipment after five years of service in June 2000 and May 2002. After five years of service, the EPIC brake systems were found to function normally. No faults were found during locomotive tests, and the teardown revealed that the parts were clean and in working condition.

In support of its proposal to extend brake maintenance for FastBrake brake systems, WABCO stated that virtually all of the core pneumatic technology that has been service proven in EPIC from the time of its introduction and documented as such under the provisions of the above waiver and were transferred into FastBrake with little or no change. They asserted that a further reduction of pneumatic logic devices had been made possible by the substitution of compute based logic. WABCO also provided a discussion of the similarities between the EPIC and FastBrake systems as well as the differences, which are primarily in the area of electronics rather than pneumatics. In conclusion, WABCO stated that the waiver could be amended without compromising safety. For the reasons above, FRA granted the waiver petition.

Over time, several brake systems have been brought into a performance based standard. FRA, along with railroads and brake valve manufacturers, has participated in a series of brake valve evaluations. Each evaluation was performed after extended use of a particular brake valve system to determine whether it can perform safely when used beyond the number of days currently permitted by part 229. The Working Group agreed with the evidence of success and the overall approach taken by FRA. As a result, the Working Group reached consensus on the proposed brake maintenance standards.

D. Brakes, General

In December of 1999, a MP&E Technical Resolution Committee (TRC), consisting of FRA and industry experts, met in Kansas City to consider the proper application of the phrase "operate as intended" contained in § 229.46 when applied to trailing, non-controlling locomotives. Extensive discussion failed to reach consensus on this issue, but revealed valuable insight into the technical underpinnings and operational realities surrounding the issue. The Working Group revived this issue, and after lengthy discussion, reached consensus.

Generally, even if a locomotive has a defective brake valve that prevents it from functioning as a lead locomotive, its brakes will still properly apply and release when it is placed and operated as a trailing locomotive. This situation can apply on either a pneumatic 26–L application or on the electronic versions of the locomotive brake. The electronic brake often will have the breaker turned off, thus making the brake inoperative unless it is being controlled by another locomotive.

Based on reading the plain language of the existing regulation it is not clear under what conditions a trailing, non-controlling locomotive operates as intended. The existing regulation provides that "the carrier shall know before each trip that the locomotive brakes and devices for regulating all pressures, including but not limited to the automatic and independent brake valves, operate as intended * * *" *See* 49 CFR 229.46. One could reasonably argue that a trailing non-controlling locomotive is operating as intended when the brakes are able to apply and release in response to a command from a controlling locomotive, because the locomotive is not intended to control the brakes when it is used in the trailing position. It could also be argued that the trailing, non-controlling locomotive's automatic and independent brake valves must be able to control the brakes whenever it is called on to do so. Under this reading, a trailing, non-controlling locomotive does not operate as intended when it is not able to control the brakes.

At the TRC meeting, the representatives from NYAB Corporation, a brake manufacturer, asserted that a problem with a faulty automatic or independent brake valve will not create an unsafe condition when the locomotive is operating in the trail position, provided the locomotive consist has a successful brake test (application and release) from the lead unit. The reason offered was that in order for a locomotive to operate in the trailing position, the automatic and independent brake valves must be cut-out. FRA agrees, and currently applies this rationale in regards to performing a calendar day inspection. The calendar day inspection does not require that the operation of the automatic and independent brake controls be verified on trailing locomotives. The Working Group agreed, and recommended adding a tagging requirement to prevent a trailing, non-controlling locomotive with defective independent or automatic brakes from being used as a controlling locomotive.

E. Locomotive Cab Temperature

In 1998, FRA led an RSAC Working Group to address various cab working condition issues. To aid the Working Group discussions, FRA conducted a study to determine the average temperature in each type of locomotive cab commonly used at the time. The

study concluded that at the location where the engineer operates the locomotive, each locomotive maintained an average temperature of at least 60 degrees. The window and door gaskets were maintained in proper condition on the locomotives that were studied. In 1998, FRA believed it was impractical to address the minimum temperature issue by regulation, especially given that, the existing industry practice was appropriate and revision of the regulation would have required considerable resources. Now that the locomotive safety standards are in the process of being revised, FRA proposes to incorporate existing industry practice into the regulation in an effort to maintain the current conditions. For review, the 1998 study has been included in the public docket related to this proceeding.

In addition to proposing an increase in the minimum cab temperature from 50 °F to 60 °F, FRA believes that establishing a maximum cab temperature limit would result in improved locomotive crew performance, which in turn would increase railroad safety. Current literature regarding the effect of low temperature on human performance indicates that performance decreases when the temperature decreases below 60 °F. Similarly, the literature regarding the effect of high temperature and humidity indicates that performance decreases when temperatures increase above 80° F, and that performance decreases to an even greater extent when the temperature increases above 90 °F. *Ergonomics,* 2002 vol. 45, no. 10, 682–698.

Locomotive crew performance is directly linked to railroad safety through the safe operation of trains. Locomotive engineers are responsible for operating trains in a safe and efficient manner. This requires the performance of cognitive tasks including the mathematical information processing required for train handling, constant vigilance, and accurate perception of the train and outside environment. Conductors are responsible for maintaining accurate train consists, including the contents and position of hazardous materials cars, for confirming the aspects and indications of signals, and for ensuring compliance with written orders and instructions. A decrease in performance of any of these tasks that can be anticipated from relevant scientific findings should be avoided where amelioration can be applied.

In the Human Reliability Analysis (HRA) literature, stressors are considered to be important factors that can affect human performance and produce errors. Such stressors are, in fact, labeled performance-shaping factors (PSFs) and include external (or environmental) factors such as temperature. In general, if one has an estimate of the human error probability (HEP) associated with some generic or specific task, the PSFs that exist are used to modulate the magnitude of that error. For example, an estimate of HEP associated with simple calculations is 0.04, with a lower bound of 0.02 and an upper bound of 0.11. If stress is introduced in a situation in which there is decision-making and multi-tasking (all of which are typical of locomotive engineer work), human factor experts recommend that HEP be increased five-fold for skilled workers and ten-fold for novice workers. Consequently, mean HEP would be estimated at 0.2 for skilled workers and at 0.4 for novices. This same logic can be applied to estimate accident reduction. Accident reduction estimates can be obtained under the assumption that accidents are proportional to the task performance decrements that accrue due to temperature stress. If a proportion of the task performance decrements is eliminated, then accidents should also be proportionately decreased. For example, in 1999, 16 of the human factors train accidents reported to the FRA occurred when the ambient temperatures were 90 °F or above. Conservatively assuming that at least eight (50 percent) of the locomotive cabs did not have operational air conditioning or other measures in place to reduce in cab temperatures below the ambient temperature and applying the overall task decrement of 0.148 as described in the meta-analysis an estimate may be made that a 65/86 temperature rule would prevent more than one in eight of the 1999 human factors train accidents that occurred when ambient and in cab temperatures were 90 °F or above. The results of applying task decrements to human factors train accidents in specific temperature ranges, however, can be considered conservative because the accidents considered only include accidents for which the primary cause was identified as "Human Factors." Experts on accident causation indicate that accidents very rarely have a single cause. Rather, there are usually multiple factors that together contribute to the generation of an accident.

In many occupational settings it is desirable to minimize the health and safety effects of temperature extremes. Depending upon the workplace, engineering controls may be employed as well as the management of employee exposure to excess cold or heat using such methods as work-rest regimens. Because of the unique nature of the railroad operating environment, the locomotive cab can be viewed as a captive workplace where the continuous work of the locomotive crew takes place in a relatively small space. For this reason, in an excessively hot cab, a locomotive crew member may have no escape from extreme temperatures, since they cannot be expected to readily disembark the train and rest in a cooler environment as part of a work-rest regimen without prior planning by the railroad. As such, FRA expects reliance upon engineering controls to limit temperature extremes. When FRA considered controls for cold and hot temperature cab environments, FRA learned that there is a range of engineering controls available that can be employed. Some of these controls are presently employed to affect the cab temperature environment. Controls include isolation from heat sources such as the prime mover; reduced emissivity of hot surfaces; insulation from hot or cold ambient environments; radiation shielding including reflective shields, absorptive shielding, transparent shielding, and flexible shielding; localized workstation heating or cooling; general and spot (fan) ventilation; evaporative cooling; chilled coil cooling systems.

As noted above, in 1998, FRA led an RSAC Working Group to address various cab working condition issues. To aid the Working Group discussions, FRA conducted a winter time study to determine the average low temperature in each type of locomotive cab commonly used at the time. The study concluded that at the location where the engineer operates the locomotive, each locomotive maintained an average temperature of at least 60 °F. *Ergonomics*, 2002 vol. 45, no. 10, 682–698. The window and door gaskets were maintained in proper condition on the locomotives that were studied. In 1998, FRA believed it was impractical to address the minimum temperature issue by regulation, especially given that, the existing industry practice was appropriate and revision of the regulation would have required considerable resources. Now that the locomotive safety standards are in the process of being revised, FRA proposes to incorporate existing industry practice into the regulation in an effort to maintain the current minimum cab temperature conditions.

Based on the preceding discussion and its review of existing literature on the subject, FRA believe it is appropriate to consider not only

limiting minimum locomotive cab temperature but also limiting maximum locomotive cab temperature. FRA believes that an appropriate maximum temperature level for a locomotive cab is a wet bulb temperature (WBT) somewhere between 80° and 90 °F. FRA recognizes that the mechanical capabilities of cooling systems on both existing and new locomotives are directly affected by the outside ambient temperature. Thus, FRA expects that the maximum cab temperature limit may need to be flexible in extreme weather conditions due to the limited ability of existing cooling systems to produce a temperature a vast number of degrees cooler than the external ambient temperature. FRA seeks comment and information from interested parties regarding current practices within the industry with regard to maintaining a maximum locomotive cab temperature.

There are a number of factors and issues that must be considered when imposing a maximum locomotive cab temperature. In an effort to develop safe and cost-effective requirements related to establishing a maximum locomotive cab temperature limit FRA seeks comments from interested parties on the following issues:

1. To what locomotives should the maximum cab temperature limits apply?

FRA does not anticipate applying the maximum cab temperature limit to all locomotives. Existing locomotives that are not equipped with air conditioners would not be required to add air conditioning units. A significant portion of the industry's existing locomotive fleet is currently equipped with air conditioners. FRA believes that air conditioning units should remain on locomotives that are currently so equipped and would expect the maximum cab temperature limit to apply to such units. FRA also expects that the maximum temperature limit would be applicable to new locomotives, and remanufactured locomotives as defined in § 229.5. FRA believes that one of the reasons that virtually all of these types of locomotives are constructed with air conditioning units in order to ensure the proper operation of the on-board electronic equipment. Thus, the locomotives are already equipped with the facilities to maintain a cab temperature below the maximum temperatures being contemplated. FRA also recognizes that at some locations the ambient temperature may seldom or never rise above 90 °F. Thus, FRA is considering an approach that might provide an exception for these types of locations from the maximum cab temperature limits. With the above discussion in mind, FRA seeks information and comments from interested parties on the following:

- What percentage of locomotives in the existing fleet are equipped with air conditioning units?
- What percentages of newly constructed or remanufactured locomotives are equipped with air conditioning units?
- What potential requirements could apply to locomotives that spend the majority of their time in locations that rarely rise above 90 °F, but also operate in locations where the temperature does rise above 90 °F?
- How could these locations be properly excluded from the maximum temperature requirements?
- Are there technologies other than air conditioning units that could be utilized in these types of locations?

2. What are the capabilities of existing locomotive cab air conditioning units?

Although FRA has not conducted tests to determine the effectiveness of air conditioning systems, FRA's knowledge of HVAC capabilities and experience riding locomotives with operative air conditioning units indicates that such systems can hold cab temperatures below 90 °F under expected service conditions when properly maintained, as is the case with rail passenger coaches, passenger MU locomotives, motorized vehicles on the highway, and other means of conveyance. However, FRA recognizes that existing air conditioners have technical limitations, and that those limitations need to be considered when developing a maximum cab temperature requirement. FRA seeks comment and information on the following:

- At what rate can air conditioning units currently being used within the industry cool the interior of a locomotive cab?
- What external conditions or factors affect an air conditioning unit's ability to reduce the interior locomotive cab temperature?
- Would it be possible to modify an existing air conditioning unit or interior of the locomotive cab to address the conditions noted above?

3. What is the appropriate method for measuring maximum locomotive cab temperature?

An effective and reliable method for measuring the maximum locomotive cab temperature will need to be included in the final rule in order to make any maximum temperature requirement enforceable. Railroad management, train crews, and FRA will need to be able to accurately measure the maximum cab temperature when a locomotive is in use. The existing and proposed minimum locomotive cab temperature requirement provides that the temperature be measured six inches above each seat in the cab. FRA believes that a similar location for measuring the maximum temperature would appear to be appropriate. FRA also recognizes that any cooling system will require a sufficient amount of time to adequately reduce the interior temperature of a locomotive cab. Thus, the ability to test or measure the temperature may not occur until a locomotive is already in use. In consideration of the above, FRA seeks comment and information from interested parties on the following:

- How do railroads currently measure or monitor locomotive cab temperatures to comply with the existing minimum temperature requirements?
- Do railroads measure cab temperature for other purposes? If so, what are those purposes?
- Could the same methods be used to monitor a maximum temperature requirement?
- Are there locations where testing or monitoring of air conditioning units would be extremely burdensome or impossible?
- The existing minimum cab temperature requirement is based on measurement of the temperature six inches above each seat in the cab. Would that also be an appropriate location in the cab to measure temperature to determine compliance with a maximum temperature requirement?
- Is there an appropriate frequency at which air conditioning units should be tested?

4. How should locomotive air conditioning units be maintained and repaired when found defective or inoperative?

In order to ensure that locomotives to which the maximum cab temperature limits would apply are generally capable of compliance, the final rule would need to contain basic inspection, maintenance, and repair provisions related to on-board cooling systems. FRA recognizes that these maintenance and repair schedules and requirements would be most applicable during those annual periods where extreme hot weather is prevalent across most of the continental United States. Thus, FRA expects to concentrate such provisions during these vital time periods. Similarly, FRA recognizes that appropriate provisions related to the handling and use of a locomotive with an inoperative cooling system would

need to be provided. Under the existing part 229 movement for repair provisions, if a locomotive were required to meet a maximum cab temperature limit and was found unable to do so, then the locomotive could only be moved to the next forward location or to its next calendar day inspection where necessary repairs to the locomotive's cooling system could be performed. FRA realizes such a stringent requirement might unduly hinder a railroad's ability to operate trains or have sufficient locomotive power in certain locations. With the foregoing discussion in mind, FRA seeks comments from interested parties on the following:

- How frequently do railroads currently inspect locomotive air conditioning units for proper operation?
- What would an appropriate interval for testing and maintaining locomotive equipped with air conditioning units?
- What movement or use restrictions should be applied to a locomotive equipped with an air conditioning unit when discovered with a cab temperature that exceeds the maximum limit?
- What maintenance or repair requirements would be appropriate if a lead/occupied locomotive has an air conditioning unit fail en route, when the ambient temperature exceeds a regulatory requirement?
- What maintenance or repair requirements would be appropriate if an air conditioning unit in a lead or occupied locomotive is found to be inoperative or operating insufficiently at pre-departure (after the train has been made up and the air-brake test has been performed)?
- Should consistent management be a factor for determining when an inoperative air conditioning unit will properly be repaired or switched out? Why or why not?

5. What are the potential costs of complying with a maximum locomotive cab temperature limit as described in the preceding discussions?

The cost implications of this proposal will depend on various factors, including temperature requirements, maintenance requirements, repair procedures, and the treatment of existing locomotives already equipped with air conditioning units. The regulatory burden may result from equipping new and remanufactured locomotives with air conditioning units. However, because most, if not all, new locomotives are currently purchased with air conditioning units already installed, the burden would likely come from the testing and maintenance, including repair, of air conditioning units.

FRA estimates that the railroad industry purchases approximately 600–700 new locomotives a year. Most of the new locomotives are purchased by Class I freight railroads. Other railroads such as Alaska Railroad, Amtrak, and some commuter railroads also purchase new locomotives. Generally, FRA does not anticipate that Class III railroads will purchase new locomotives, and thereby, be affected by this proposal in the immediate or near future. FRA is considering requiring air conditioning units on only new or remanufactured locomotives. FRA believes that most, if not all, new and remanufactured locomotives are manufactured with air conditioning units, and most locomotives that receive life extending modifications are also likely equipped. FRA requests information regarding the specifications for air conditioning units currently installed on new, remanufactured, and overhauled locomotives. Specifically, FRA seeks information regarding temperature and humidity capabilities. FRA also seeks information regarding the tolerances of the units in the locomotive running environment, which may include over 12 hours of continuous operation at high temperature and humidity levels. To the extent that new locomotives are already equipped with air conditioning units that can function well in the environment in which they operate, there would be little or no additional regulatory cost associated with the basic requirement to equip new locomotives with such units.

Requirements for periodic testing of air conditioning units could also add regulatory cost. FRA believes that most railroads are prudently testing the air conditioning units on their locomotives annually or periodically at shorter intervals. These tests are most likely conducted when the locomotive is already out of service for a 92 day inspection. FRA requests information on the frequency of testing and the cost associated with conducting the tests. Requirements for repairing air conditioning units could also add regulatory cost. In order to develop a cost analysis of the maintenance and repairs that would be needed to properly utilize the AC units, FRA requests information regarding the frequency of air conditioning failures and the nature of common defects as well as the costs associated with making the repairs. FRA also requests information regarding reasonable ways to address air conditioning units that are discovered defective outside of the maintenance window. FRA estimates that an air conditioning unit has a life-cycle of 8 and 10 years. The cost for testing and repairing air conditioning units on locomotives is most likely the highest cost element of this proposal. However, the potential regulatory cost for such a proposal would depend on the actual requirement that is promulgated. The cost would increase if a lead locomotive is required to be switched out after the initial air-brake test, or if the AC unit on the lead locomotive failed en route.

FRA seeks information and comments on the following issues related to costs:

- What are the costs associated with increased maintenance and modifications to locomotive equipped with air conditioning units to ensure they operate as intended?
- What would be the expected costs to equip new and remanufactured locomotives with air conditioners that are capable of satisfying the type of maximum temperature limit discussed above?
- How many new locomotives are currently equipped with air conditioning units?
- What operational burdens would be placed on the industry should a maximum cab temperature limit be included in the final rule?

F. Headlights

The proposed revisions to the headlight provisions would incorporate waiver FRA 2005–23107 into part 229. This would permit a locomotive with one failed 350-watt incandescent lamp to operate in the lead until the next daily inspection, if the auxiliary lights remain continuously illuminated. Currently, a headlight with only one functioning 200-watt lamp is not defective and does not affect the permissible movement of a locomotive. However, a locomotive with only one functioning 350-watt lamp in the headlight can be moved only pursuant to section 229.9. The proposed treatment of locomotives with a failed 350-watt lamp would allow flexibility, and be consistent with the current treatment of 200-watt lamps.

Testing showed that production tolerances for the 350-watt incandescent lamp cause most individual lamps to fall below the 200,000 candela requirement at the center of the beam. As such, two working 350-watt lamps are required to ensure 200,000 candela at the center of the beam. Testing also showed that the 350-watt incandescent lamp produced well over 100,000 candela at the center of the beam, and its high power and the position of the filament within the reflector causes the lamp to be brighter than the 200-watt

incandescent lamp at all angles greater than approximately 2.5 degrees off the centerline. In other words, the only area in which the 350-watt lamp produces insufficient illumination is within 2.5 degrees of the centerline. The proposed requirement would compensate for the reduced amount of illumination by requiring the auxiliary lights to be aimed parallel to the centerline of the locomotive and illuminate continuously.

Significantly, in 1980, when FRA promulgated the 200,000 candela requirement it could not take into consideration the light produced by auxiliary lights, because they were not required and not often used. Today, there is light in front of a locomotive produced by both the headlight and the auxiliary lights. When discussing AAR's request that the final rule permit locomotives with a nonfunctioning 350-watt lamp to operate without restriction, FRA stated that AAR's comments "may have merit when considering locomotives with auxiliary lights aimed parallel to the centerline of the locomotive." *See* 69 FR 12533. While the auxiliary lights on some locomotives are aimed parallel to the centerline, on many others the auxiliary lights are aimed so that their light will cross 400 feet in front of the locomotive. The regulations only require auxiliary lights to be aimed within 15 feet of the centerline. FRA is not aware of a basis for assuming that the light from two auxiliary lights complying with the regulations in any fashion would be insufficient, when combined with a 350-watt headlight lamp.

G. Alerters

Alerters are a common safety device intended to verify that the locomotive engineer remains capable and vigilant to accomplish the tasks that he or she must perform. An alerter will initiate a penalty brake application to stop the train if it does not receive the proper response from the engineer. As an appurtenance to the locomotive, an alerter must operate as intended when present on a locomotive. Section 20701 of Title 49 of the United States Code prohibits the use of a locomotive unless the entire locomotive and its appurtenances are in proper condition and safe to operate in the service to which they are placed. Under this authority, FRA has issued many violations against railroads for operating locomotives equipped with a non-functioning alerter.

Alerters are currently required on passenger locomotives by § 238.237 (67 FR 19991 (2002)), and are present on most freight locomotives. A long-standing industry standard currently contains more stringent requirements than provisions being proposed in this document. *See* AAR Standard S–5513, "Locomotive Alerter Requirements," (November 26, 2007).

After several productive meetings, the Working Group reached partial consensus on requirements related to the regulation of alerters. For those areas where agreement could not be reached, FRA has fully considered the information and views of the Working Group members in developing the proposed requirements related to locomotive alerters. The proposed provisions also take into consideration recommendations made by the NTSB.

On July 10, 2005, at about 4:15 a.m., two Canadian National (CN) freight trains collided head-on in Anding, Mississippi. The collision occurred on the CN Yazoo Subdivision, where the trains were being operated under a centralized traffic control signal system on single track. Signal data indicated that the northbound train, IC 1013 North, continued past a stop (red) signal at North Anding and collided with the southbound train, IC 1023 South, about ¼ mile beyond the signal. The collision resulted in the derailment of six locomotives and 17 cars. Approximately 15,000 gallons of diesel fuel were released from the locomotives and resulted in a fire that burned for roughly 15 hours. Two crewmembers were on each train; all four were killed. As a precaution, about 100 Anding residents were evacuated; fortunately, they did not report any injuries. Property damages exceeded $9.5 million and clearing and environmental cleanup costs totaled approximately $616,800.

The NTSB has issued a series of safety recommendations that would require freight locomotives to be equipped with an alerter. On April 25, 2007, the NTSB determined that a contributing cause of the head-on collision in Anding, Mississippi was the lack of an alerter on the lead locomotive, which if present, could have prompted the crew to be more attentive to their operation of the train. *See* Recommendation R–07–1. That recommendation provides as follows: "[r]equire railroads to ensure that the lead locomotives used to operate trains on tracks not equipped with a positive train control system are equipped with an alerter."

Another NTSB recommendation relating to locomotive alerters was issued as a result of an investigation into the collision of two Norfolk Southern Railway freight trains at Sugar Valley, Georgia, on August 9, 1990. In that incident, the crew of one of the trains failed to stop at a signal. The NTSB concluded that the engineer of that train was probably experiencing a micro-sleep or was distracted. Based on testing, it was determined that as the train approached the stop signal, the alerter would have initiated an alarm cycle. The NTSB concluded that the engineer "could have cancelled the alerter system while he was asleep by a simple reflex action that he performed without conscious thought." As a result of the investigation, the NTSB made the following recommendation FRA: "[i]n conjunction with the study of fatigue of train crewmembers, explore the parameters of an optimum alerter system for locomotives. *See* NTSB Recommendation R–91–26.

Typically, alerter alarms occur more frequently as train speed increases. Unlike the Sugar Valley, Georgia, accident in which the train had slowed and entered a siding before overrunning a signal, the northbound train in the Anding, Mississippi, remained on the main track at higher speeds. Had an alerter been installed, there was a four minute time period after passing the approach signal during which the alerter would have activated four to five times. It seems unlikely that the engineer could have reset the alerter multiple times by reflex action without any increase in his awareness. Therefore, the NTSB determined that an alerter likely would have detected the lack of activity by the engineer and sounded an alarm that could have alerted one or both crewmembers. Had the crew been incapacitated or not responded to the alarm, the alerter would have automatically applied the brakes and brought the train to a stop. The NTSB concluded that had an alerter been installed on the lead locomotive of the northbound train, it may have prevented the collision.

The NTSB also closely examined the use of locomotive alerters when investigating the sideswipe collision between two Union Pacific Railroad (UP) freight trains in Delia, Kansas, on July 2, 1997. In that accident, a train entered a siding but did not stop at the other end, and it collided with a passing train on the main track. The NTSB concluded that "had the striking locomotive been equipped with an alerter, it may have helped the engineer stay awake while his train traveled through the siding." As a result of its investigation, the NTSB made the following recommendation to the FRA: "[r]evise the Federal regulations to require that all locomotives operating on lines that do not have a positive train separation system be equipped with a cognitive alerter system that cannot be

reset by reflex action." *See* NTSB Recommendation R–99–53.

FRA believes that the proposed provisions related to alerters incorporate existing railroad practices and locomotive design and address each of the NTSB recommendations discussed above.

F. Locomotive Electronics

After extensive discussion, the Working Group reached consensus on the proposed requirements related to locomotive electronic systems. Advances in electronics and software technology have resulted in changes to the implementation of locomotive control systems. Technology changes have allowed the introduction of new functional capabilities as well as the integration of different functions in ways that advance the building, operation, and maintenance of locomotive control systems. FRA encourages the use of these advanced technologies to improve safe, efficient, and economical operations. However, the increased complexities and interactions associated with these technologies increase the potential for unintentional and unplanned consequences, which could adversely affect the safety of rail operations.

The proposed regulation would prescribe safety standards for safety-critical electronic locomotive control systems, subsystems, and components including requirements to ensure that the development, installation, implementation, inspection, testing, operation, maintenance, repair, and modification of those products will achieve and maintain an acceptable level of safety. This proposal would also prescribe standards to ensure that personnel working with safety-critical products receive appropriate training. Of course, each railroad would be able to prescribe additional or more stringent rules, and other special instructions, provided they are consistent with the proposed standards.

FRA also recognizes that advances in technology may further eliminate the traditional distinctions between locomotive control and train control functionalities. Indeed, technology advances may provide for opportunities for increased or improved functionalities in train control systems that run concurrent with locomotive control. Train control and locomotive control, however, remain two fundamentally different operations with different objectives. FRA does not want to restrict the adoption of new locomotive control functions and technologies by establishing regulations for locomotive control systems intended to address safety issues associated with train control.

G. Periodic Locomotive Inspection

The Locomotive Safety Standards Working Group was unable to reach consensus on whether current locomotive inspection intervals and procedures are appropriate to current conditions. Recently, on June 22, 2009, FRA granted the Burlington Northern Santa Fe's (BNSF) request for waiver from compliance with the periodic locomotive inspection requirements. *See* Docket FRA–2008–0157. BNSF stated in their request that each of the subject locomotives are equipped with new self-diagnostic technology and advanced computer control, and that the locomotives were designed by the manufacturer to be maintained at a six month interval.

In the waiver petition, BNSF requested that the required 92-day periodic inspection be performed at 184 day intervals on subject locomotives, if qualified mechanical forces perform at least one of the required daily inspections every 31 days and FRA non-complying conditions that are discovered en-route or during any daily inspection are moved to a mechanical facility capable of making required repairs. This approach to conducting inspections based on current conditions may be suitable to other similarly situated railroads. FRA seeks comment on this issue.

H. Rear End Markers

In 2003, the U.S. DOT's Office of Governmental Affairs received a letter from Senator Feinstein on behalf of her constituent, Mr. David Creed. Mr. Creed suggested a revision to FRA's rear end marker regulation, which is found in part 221. Specifically, Mr. Creed suggested that Federal regulations should require trains with distributive power on the rear to have a red marker, because a red marker would make for a safer operating environment by giving a rail worker a better indication of whether he or she is looking at the rear or front end of the train. Mr. Creed made reference to a recent fatality involving a BNSF conductor who jumped from his train because he observed a headlight that he mistakenly believed was a train on the same track, directly ahead of his train. As FRA is currently reviewing its existing requirements for locomotive safety standards, FRA requests comments on this rear end marker issue.

I. Locomotive Horn

FRA solicits comments regarding methods currently being used by railroads to test locomotive horns as required by § 229.129. More than one method of testing will satisfy the current testing requirements. FRA is considering whether certain current methods of testing should be preferred, or additional methods should be permitted.

J. Risk Analysis Standardization and Harmonization

FRA has been actively implementing, whenever practical, performance regulations based on the management of risk. In the process of doing so, a number of different system safety requirements, each unique to a particular regulation, have been promulgated. While this approach is consistent with the widely, and deeply, held conviction that risk management efforts should be specifically tailored for individual situations, it has resulted in confusion regarding the applicable regulatory requirements. This, in turn has defeated one of the primary objectives of using performance based regulations, reduction in costs from simplifying regulations.

The problem is not the concept of tailoring, but the lack of standard terms, basic tools, and techniques. Numerous directives, standards, regulations, and regulatory guides establish the authority for system safety engineering requirements in the acquisition, development, and maintenance of hardware and software-based systems. The lack of commonality makes extremely difficult the task of training system safety personnel, evaluating and comparing programs, and effectively monitoring and controlling system safety efforts for the railroads, their vendors, and the government. Even though tailoring will continue to be an important system safety concept, at some point FRA believes the proliferation of techniques, worksheets, definitions, formats, and approaches has to end, or at least some common ground has to be established.

To accomplish this, FRA proposes to harmonize risk management process requirements across all regulations that have been promulgated by the agency. This will implement a systematic approach to hardware and software safety analysis as an integral part of a project's overall system safety program for protecting the public, the worker, and the environment. Harmonization enhances compliance and improves the efficiency of the transportation system by minimizing the regulatory burden. Harmonization also facilitates interoperability among products and systems, which benefits all stakeholders. By overcoming institutional and financial barriers to

technology harmonization, stakeholders could realize lower life-cycle costs for the acquisition and maintenance of systems. To this end, FRA requests comments on appropriate, cost effective, performance based standards containing precise criteria to be used consistently as rules, guidelines, or definitions of characteristics, to ensure that materials, products, processes and services are fit for purpose, and present an acceptable level of risk that are applicable across all elements of the railroad industry.

K. MCB Contour 1904 Coupler

FRA believes that the existing requirement related to MCB contour 1904 couplers, contained in § 229.61(a)(1), is out dated. The existing regulation prohibits the use of a MCB contour 1904 coupler, if the distance between the guard arm and the knuckle nose is more than 5 ⅛ inches. FRA understands that the MCB contour 1904 coupler design has not been used in the railroad industry since the 1930s. Most, if not all, of the current locomotive fleet are equipped with Type E couplers. For these couplers, the maximum distance permitted between the guard arm and the knuckle nose is 5 3/16 inches, as identified in § 229.61(a)(1). FRA seeks comments as to whether any locomotives are currently being operated with MCB contour 1904 couplers, and whether the requirement related to MCB contour 1904 couplers should be removed from the locomotive safety standards

L. Locomotive Cab Securement

FRA is evaluating securement options for locomotive cab doors. Cab securement can potentially prevent unauthorized access to the locomotive cab, and thereby increase train crew safety. However, cab securement demands a careful and balanced approach because when emergencies requiring emergency egress or rescue access occur, securement systems must not hinder rapid and easy egress by train crews or access by emergency responders without undue delay. FRA is exploring how to achieve greater safety by properly balancing these concerns.

On June 20, 2010, a CSX Conductor was shot and killed in the cab of the controlling locomotive of his standing train in New Orleans, during an attempted robbery. The Locomotive Engineer assigned to that train was also wounded by gunfire during the incident. This incident was particularly tragic, because it resulted in a fatality. By letter dated September 22, 2010, in response to this incident, the BLET requested that FRA require the use of door locks on locomotive cab doors. Under current industry practice, many locomotive cab doors are not locked. According to BLET's letter, requiring the use of door locks would impede unauthorized access to the locomotive cab and reduce the risk of violence to the train crew when confronted by a potential intruder. FRA solicits comments regarding the impact that a locked door would have on train crew safety. More specifically, FRA poses the following questions regarding existing locomotive doors:

- Can a door lock be broken when struck by a heavy, solid object like a baseball bat, sledge hammer, or crowbar?
- Can a door lock be broken by gunfire?
- If a keyed lock is used, is it possible that the lock can be picked by an unauthorized person?
- If a keyed lock is used, is it possible for the key to be lost, stolen, or duplicated without authorization?
- If the door is locked, can a potential intruder gain access to the cab by breaking through the door's window?
- If the door is locked, can gunfire penetrate the door's window, the door itself, or another portion of the car body?

In addition, FRA requests comments regarding the potential effectiveness of using different locking mechanisms to secure the locomotive cab. A portion of the industry is currently equipping new locomotives with dead-bolt door locks. Door locks with quick release mechanisms, keyed locks, and biometric locks could also potentially be used to secure a locomotive cab. FRA seeks comments regarding the potential benefits and concerns for each type of locking mechanism. FRA also requests information concerning the effect of door locks during emergency situations requiring rapid and easy evacuation of the locomotive compartment or rescue access. After an accident or other life threatening situation, a train crew may need to quickly exit a locomotive cab, particularly in the event of a fire or a hazardous materials release, and a train crew may require assistance from emergency responders when injured or incapacitated. To help solicit an abundance of information, FRA poses the following questions:

- To what extent will the use of a door lock to secure the locomotive cab hinder rapid and easy egress of the train crew?
- If keyed locks are used, should emergency responders be given keys?
- To what extent will emergency responders' access to the cab be unduly delayed by door locks?
- Will door locks prohibit emergency responders' access to the cab when the crew is incapacitated?
- How can locomotive cab doors be secured without hindering the crews' ability to egress rapidly and easily or emergency responders' ability to gain access without undue delay?

FRA also requests information related to the costs associated with installing and maintaining various locomotive cab locking mechanisms. More specifically, for existing locomotives how many do not have locking mechanisms? And, what type of locking device would be the most cost effective to install and maintain and also adequately address the three safety needs described above. Finally, are there any locomotives in the US (existing or new) that would be particularly difficult or expensive to equip with a locking mechanism? If so, which locomotives are they, and how many of these locomotives exist? FRA also requests comment as to how many locomotives are currently being manufactured for domestic service with these devices? If FRA decides to establish a uniform cab securement requirement for new locomotives, what type of locking mechanism is recommended, and why? Finally, how much would such a locking mechanism cost to install and maintain on new and existing locomotives?

VI. Section-by-Section Analysis

This section-by-section analysis of the proposed rule is intended to explain the rationale for each section of the proposed rule. The analysis includes the requirements of the proposal, the purpose that the proposal would serve in enhancing locomotive safety, the current industry practice, and other pertinent information. The proposed regulatory changes are organized by section number. FRA seeks comments on all proposals made in this NPRM.

A. Proposed Amendments to Part 229 Subparts A, B, and C

Section 229.5 Definitions

This section contains a set of definitions to be introduced into the regulation. FRA intends these definitions to clarify the meaning of important terms as they are used in the text of the proposed rule. The proposed definitions are carefully worded in an attempt to minimize the potential for misinterpretation of the rule. The definition of alerter introduces an unfamiliar term which requires further discussion.

"Alerter" means a device or system installed in the locomotive cab to promote continuous, active locomotive

engineer attentiveness by monitoring select locomotive engineer-induced control activities. If fluctuation of a monitored locomotive engineer-induced control activity is not detected within a predetermined time, a sequence of audible and visual alarms is activated so as to progressively prompt a response by the locomotive engineer. Failure by the locomotive engineer to institute a change of state in a monitored control, or acknowledge the alerter alarm activity through a manual reset provision, results in a penalty brake application that brings the locomotive or train to a stop. For regulatory consistency FRA is proposing the same definition as the one provided in part 238. FRA intends for a device or system that satisfies an accepted industry standard including, but not limited to, AAR Standard S–5513, "Locomotive Alerter Requirements," dated November 26, 2007, to constitute an alerter under this definition.

New definitions for terms related to remote control locomotives are also being proposed. The proposed terms, "Assignment Address," "Locomotive Control Unit," "Operator Control Unit," "Remote Control Locomotive," "Remote Control Operator," and "Remote Control Pullback Protection" are common to the industry. On February 14, 2001, FRA published a Safety Advisory in which FRA issued recommended guidelines for conducting remote control locomotive operations. *See* 66 FR 10340, Notice of Safety Advisory 2001–01, Docket No. FRA–2000–7325. The Safety Advisory includes definitions for each of the proposed terms. FRA's proposed definitions for these terms are informed by the Safety Advisory and Working Group discussions.

"Controlling locomotive" means a locomotive from where the operator controls the traction and braking functions of the locomotive or locomotive consist, normally the lead locomotive. This proposed definition is being added to help identify which locomotives are required to be equipped with an alerter, and when the alerter is required to be tested.

Section 229.7 Prohibited Acts and Penalties

Minimal changes are being proposed in this section to update the statutory reference and the statutory penalty information.

Section 229.15 Remote Control Locomotives

After working with the railroad industry for many years to provide a framework for the safe use, development, and operation of remote control devices, FRA proposes to formally codify safety standards for remote control operated locomotives. For convenience, FRA proposes to divide the section into two headings: Design and operation, and inspection and testing.

Generally, the proposed design and operation requirements are intended to prevent interference with the remote control system, maintain critical safety functions if a crew is conducting a movement that involves the pitch and catch of control between more than one operator, tag the equipment to notify anyone who would board the cab that the locomotive is operating remote control, and bring the train to a stop if certain safety hazards arise. The proposed inspection and testing requirements are intended to ensure that each remote control locomotive would be tested each time it is placed in use, and ensure that the operator is aware of the testing and repair history of the locomotive. It is FRA's understanding that virtually all railroads that operate remote control locomotives have already adopted similar standards, and that they have proven to provide consistent safety for a number of years.

Section 229.19 Prior Waivers

FRA proposes to update the language in § 229.19 to address the handling of prior waivers of requirements in part 229 under the proposed rule. A number of existing waivers are incorporated into the proposed rule, others may no longer be necessary in light of the proposal. The proposal allows railroads the opportunity to assert that their existing waiver is necessary, and should be effective after the proposed rule is adopted.

On February 28, 2007, in a notice, FRA proposed the sunset of certain waivers granted for the existing locomotive safety standards. 72 *FR* 9059. The proposal urged grantees to submit existing waivers for consideration for renewal in light of potential revisions to the regulation, and explained FRA's interest in treating older waivers consistently with newer waivers that were limited to five years. The five year limitations were issued as far back as March of 2000. The notice also established a docket to receive waivers for consideration.

In addition, the notice discussed the possibility of requiring current grantees to re-register waivers. To streamline the process, FRA's proposal does not include a re-registration requirement.

Section 229.20 Electronic Record-keeping

As explained in proposed paragraph (a), FRA would establish standards for electronic record-keeping that a railroad may elect to utilize to comply with many of the record-keeping provisions contained in this part. As with any records, replacing a paper system that requires the physical filing of records with an electronic system and the large and convenient storage capabilities of computers, will result in greater efficiency. Increased safety will also result, as railroads will be able to access and share records with appropriate employees and FRA quicker than with a paper system. To be acceptable, electronic record-keeping systems must satisfy all applicable regulatory requirements for records maintenance with the same degree of confidence as is provided with paper systems. The proposed requirements would be consistent with a series of waivers that FRA has granted since April 3, 2002 (Docket Number FRA–2001–11014), permitting electronic record-keeping with certain conditions intended to ensure safety. In this proposed section, FRA is adopting the Working Group's consensus regulatory text for electronic record-keeping that was approved and recommended to FRA by the RSAC on September 10, 2009. The proposed standards are organized into three categories: (1) Design requirements, (2) operational requirements, and (3) availability and accessibility requirements.

(b) Design requirements. To properly serve the interest of safety, records must be accurate. Inspection of accurate records will reveal compliance or non-compliance with Federal regulations and general rail safety practices. To ensure the authenticity and integrity of electronic records it is important that security measures be in place to prevent unauthorized access to the data in the electronic record and to the electronic system. Proposed paragraphs (b)(1) through (b)(5) are intended to help secure the accuracy of the electronic records and the electronic system by preventing tampering, and other forms of interference, abuse, or neglect.

(c) Operational requirements. Proposed paragraphs (c)(1) and (c)(2) are intended to utilize the improved safety capabilities of electronic systems. The requirements of paragraph (c)(1) would cover both inspection and repair records. In situations when the Hours of Service laws would potentially be violated, the electronic system would be required to prompt the person to input

the data as soon as he or she returns to duty.

(d) Access and availability requirements. To properly serve the interest of safety, the electronic records and the electronic record-keeping system must be made available and accessible to the appropriate people. FRA must have access to the railroads' electronic records and limited access to the electronic record-keeping systems to carry out its investigative responsibilities. During Working Group discussions, a member representing railroad management explained that his railroad currently can produce an electronic record within ten minutes, but that a paper record may take up to two weeks. As such, the proposal provides up to fifteen days to produce paper copies and requires that the electronic records will be provided upon request.

Section 229.23 Periodic Inspection: General

This section would require railroads that choose to maintain and transfer records as provided for in proposed § 229.20, to print the name of the person who performed the inspections, repairs, or certified work on the Form FRA F 6180–49A that is displayed in the cab of each locomotive. This would allow the train crew to know who did the previous inspection when they board the locomotive cab.

Section 229.25 Test: Every Periodic Inspection

Two additional paragraphs are proposed in this section to include inspection requirements for remote control locomotives and locomotive alerters during the 92-day periodic inspection. FRA is proposing new regulations for remote control locomotives, *see* proposed § 229.15, and locomotive alerters, *see* proposed section § 229.140. For convenience, the maintenance for remote control locomotives and locomotive alerters that would properly be conducted at intervals matching the 92-day periodic inspection, are being incorporated into this section. The existing paragraphs would also be reorganized for convenience.

Section 229.27 Annual Tests

FRA proposes to amend this section by deleting the following existing language from paragraph (b): "The load meters shall be tested" from paragraph (b). The modification would clarify the regulatory language to reflect the current understanding and application of the load meter requirement. FRA issued a clarification for load meters on AC locomotives on June 15, 1998. In a letter to GE Transportation Systems in March 2005, FRA issued a similar clarification of the requirements related to testing load meters on DC locomotives. The letter explained that on locomotives that are not equipped with load meters there are no testing requirements. Similarly, if a locomotive is equipped with a load meter but is using a proven alternative method for providing safety, and no longer needs to ascertain the current or amperage that is being applied to the traction motors, there are no testing requirements for the dormant load meter. Load meters have been eliminated or deactivated on many locomotives because the locomotives are equipped with thermal protection for traction motors and no longer require the operator to monitor locomotive traction motor load amps.

FRA also proposes removing existing paragraph (a) from this section and merging it into the brake requirements contained in proposed § 229.29. Proposed § 229.29 concerns brake maintenance, and as discussed below, would be reorganized by this proposal to consolidate all existing locomotive brake maintenance into one regulation.

Section 229.29 Air Brake System Calibration, Maintenance, and Testing

This section would be re-titled, and existing requirements would be consolidated and better organized to improve clarity. Because proposed § 229.29 concerns only brakes, it would be re-titled, "Air Brake System Calibration, Maintenance, and Testing" to more accurately reflect the section's content. Existing § 229.27(a), which also addresses brake maintenance would be integrated into this section for convenience and clarity. Record-keeping requirements for this section would be moved from existing paragraphs (a) and (b) and merged into a single new proposed paragraph (g). The date of air flow method (AFM) indicator calibration would also be required to be recorded and certified in the remarks section of Form F6180–49A under paragraph (g).

The proposed brake maintenance in this section would extend the intervals at which required brake maintenance is performed for several types of locomotive brake systems. The length of the proposed intervals reflects the results of studies and performance evaluations related to a series of waivers starting in 1981 and continuing to present day. Overall, the type of brake maintenance that would be required would remain the same. The current regulation provides for two levels of brake maintenance. Existing § 229.27(a) requires routine maintenance for filters and dirt collectors, and brake valves. Existing § 229.29(a) requires maintenance for certain brake components including parts that can deteriorate quickly and pieces of equipment that contain moving parts. To better tailor the maintenance requirements to the equipment needs and based on information ascertained from various studies and performance evaluations, filters and dirt collector maintenance would be required more frequently than brake valve maintenance. As a result, the proposal provides for three levels of brake maintenance instead of two.

Studies and performance evaluations of brake systems continue, and may reach conclusion by the publication of a final rule in this proceeding. In an effort to incorporate FRA's findings in a timely manner, and produce an up-to-date final rule, FRA will consider adjusting the proposed regulations based on its findings. Specifically, FRA is currently studying the effect, if any, that air dryers have on the maintenance of brake systems. FRA seeks comment on this issue.

Proposed paragraph (f)(2) would set maintenance intervals at four years for slug units that are semi-permanently attached to a host locomotive. Slugs are used in situations where high tractive effort is more important than extra power, such as switching operations in yards. A railroad slug is an accessory to a diesel-electric locomotive. It has trucks with traction motors but is unable to move about under its own power, as it does not contain a prime mover to produce electricity. Instead, it is connected to a locomotive, called the host, which provides current to operate the traction motors.

FRA is proposing to incorporate conventional locomotive requirements from part 238 into this section for convenience. FRA believes that there may be some benefit to moving all of the locomotive requirements, including MU locomotives, from part 238 to part 229. FRA seeks comments on this issue.

FRA is also considering whether moving AFM indicator calibration requirements from § 232.205(c)(iii) into this section would be appropriate. Currently, both the calibration and testing requirements for the AFM are contained in part 232. While the testing requirements are most closely related to the subject matter addressed by part 232, power brakes; FRA believes that the calibration requirements are more closely related to the locomotives. FRA requests comments on this issue.

Section 229.46 Brakes: General

FRA proposes to clarify this section, and provide standards for the safe use of a locomotive with an inoperative or ineffective automatic or independent brake control system. The proposal would allow a locomotive with a defective air brake control valve to run until the next periodic inspection required by § 229.23. However, the requirement to place a tag on the isolation switch would notify the crew that the locomotive could be used only according to § 229.46(b) until it is repaired.

The proposal would also clarify what it means for the brakes to operate as intended, as required by this section. Some Working Group members asserted that the automatic and independent brake valves are not intended to function on a trailing unit that is isolated from the train's air brake system, therefore they were "operating as intended" when not operating at all. Generally, when a unit is found with an automatic or independent brake defect, the railroad may choose to move the unit to a trailing position, and because it is in a trailing position, it may be dispatched without record of the need for maintenance. Proposed paragraph (b)(1) would explicitly permit units with defective independent brakes to be moved in the trailing position. Proposed paragraphs (b)(2) through (b)(6) are intended to ensure that the trailing unit is handled safely, and that appropriate records are kept and repairs are made.

Section 229.85 High Voltage Markings: Doors, Cover Plates, or Barriers

FRA proposes to clarify this section. The purpose of this section is to warn people of a potential shock hazard before the high voltage equipment is exposed. A conspicuous marking on the last cover, door, or barrier guarding the high voltage equipment satisfies the purpose of this section. Many locomotives have multiple doors in front of high voltage equipment. Often there is a door on the car body that provides access to the interior of the car body which contains high voltage equipment that is guarded be an additional door, for example, main generator covers and electrical lockers. FRA's intent has been to require the danger marking only on the last door that guards the high voltage equipment. Thus, FRA is proposing to slightly modify the language currently contained in this section to make this intent clear and unambiguous. To further clarify the intent of this section, FRA is also proposing to change the title.

Section 229.114 Steam Generator Inspections and Tests

FRA proposes to add this section in order to consolidate the steam generator requirements contained in various sections of part 229 into a single section. Currently, requirements related to steam generators can be found in §§ 229.23, 229.25, and 229.27. Consolidating the requirements into one section will make them easier to find for the regulated community, and help simplify and clarify each of the sections that currently include a requirement related to steam generators. The proposal is not intended to change the substance of any of the existing requirements.

Section 229.119 Cabs, Floors, and Passageways

In this section, FRA proposes to raise the minimum allowable temperature in an occupied locomotive cab from 50 degrees to 60 degrees. Each occupied locomotive cab would be required to maintain a minimum temperature of 60 degrees Fahrenheit when the locomotive is in use. FRA recognizes that it takes some time for the cab to heat up when the locomotive is first turned on, and that some crew members may prefer to work in slightly cooler temperatures and temporarily turn off the heater. Thus, FRA would only apply this requirement in situations where the locomotive has had sufficient time to warm-up and where the crew has not adjusted that temperature to a personal setting.

Section 229.123 Pilots, Snowplows, End Plates

FRA proposes to clarify paragraph (a) of this section. Based on experience applying the regulation, FRA recognizes that a reasonable, but improper, reading of the existing language could lead to the incorrect impression that a pilot or snowplow is not required to extend across both rails. To prevent this misunderstanding and to clarify the existing requirement, the phase "pilot, snowplow or end plate that extends across both rails", would be substituted for "end plate which extends across both rails, a pilot, or a snowplow." FRA believes this language makes clear that any of the above mentioned items must extend across both rails.

Due to the height of retarders in hump yards, it is not uncommon for the pilot, snowplow, or endplate to strike the retarder during ordinary hump yard operations. To accommodate the retarders and prevent unnecessary damage, FRA has issued waivers to permit more clearance (the amount of vertical space between the bottom of the pilot, snowplow, or endplate and the top of the rail) in hump yards, if certain conditions are met. FRA proposes the addition of paragraph (b) to this section to obviate the need for individual waivers by incorporating these conditions into the revised regulation. The conditions that were included in the waivers, are reflected in paragraphs (b)(1) through (b)(5).

The clearance requirement is intended to ensure that obstructions are cleared from in front of the locomotive and to prevent the locomotive from climbing and derailing. In FRA's experience, hump yards contain few obstructions that present this potential risk. The protections provided by a pilot, snowplow, or endplate are most desirable at grade crossings where the requirement would remain without change. This section also proposes various requirements to ensure that the train crew is notified of the increased amount of clearance and to prevent the improper use of the locomotive. The proposed provisions would require locomotives with additional clearance to be stenciled at two locations, notification to the train crew of any restrictions being placed on the locomotive, and noting the amount of clearance on the Form FRA 6180–49a that is maintained in the cab of the locomotive.

Section 229.125 Headlights and Auxiliary Lights

To incorporate an existing waiver, this proposed section would permit a locomotive to remain in the lead position until the next calendar day inspection after an en route failure of one incandescent PAR–56, 74-volt, 350-Watt lamp, if certain safety conditions are satisfied. FRA also proposes to extend the existing auxiliary intensity requirements at 7.5 degrees and 20 degrees to the headlight to clarify the criteria by which equivalence of new design head light lamps will be evaluated to achieve the same safety benefit.

Recently, information has been submitted by a manufacturer asserting that a new Halogen PAR–56, 350-watt, 74-volt lamp is equivalent to the incandescent PAR–56, 200-watt, 30-volt lamp mentioned in the existing regulation. FRA believes this claim has merit, and the Working Group concurred. Therefore, proposed references to that lamp have been added at appropriate locations in this section.

When one of two lamps in a headlight utilizing PAR–56, 350-watt, 74-volt lamps is inoperative, the center beam illumination for that headlight often drops below 200,000 candela due to manufacturing tolerances. FRA issued a

waiver that allows a locomotive equipped with these lamps to continue in service as a lead unit until the next calendar day inspection, when one of the two lamps becomes inoperative. Alternatively, when locomotives are handled under the general movement for repair provision of § 229.9, they are required to be repaired or switched to a trailing position at the next forward location where either could be accomplished. Proposed paragraph (a)(2)(i) of this section, incorporates the waiver into the regulation. Conditions listed in paragraphs (a)(2)(i)(A), (B), and (C) ensure that neither locomotive conspicuity at grade crossings, nor the illumination of the right of way will be compromised.

Section 229.133 Interim Locomotive Conspicuity Measures—Auxiliary External Lights

To update the regulations related to locomotive conspicuity, FRA proposes to remove the ditch light and crossing light requirements in § 229.133 that have been superseded by similar requirements in § 229.125. Section 229.133 currently contains interim locomotive conspicuity measures that were incorporated into the regulations in 1993 while the final provisions related to locomotive auxiliary lights were being developed. *See* 58 FR 6899; 60 FR 44457; and 61 FR 8881. The requirements related to ditch lights and crossing lights in § 229.133 were later superseded by similar requirements in § 229.125, published in 1996, and revised in 2003 and 2004. *See* 68 FR 49713; and 69 FR 12532. In 1996, locomotives equipped with ditch lights or crossing lights that were in compliance with the requirements of § 229.133, were temporarily deemed to be in compliance by § 229.125 (*i.e.*, grandfathered into the new regulation). However, that provision expired on March 6, 2000. As a result, ditch lights and crossing lights that comply with § 229.133 have not satisfied the requirements § 229.125 for more than 10 years. No substantive changes to the auxiliary external light requirements are being proposed in this section.

Section 229.140 Alerters

This section proposes to require locomotives that operate over 25 mph be equipped with an alerter and would require the alerter to perform certain functions. Today, a majority of locomotives are equipped with alerters. As an appurtenance to the locomotive, the alerters are required to function as intended, if present. The proposed requirements would increase the number of locomotives equipped with an alerter, and would provide specific standards to ensure that the alerters are used and maintained in a manner that increases safety.

During Working Group discussions, all parties agreed that an alerter would be considered non-compliant if it failed to reset in response to at least three of the commands listed in proposed paragraphs (b)(1) through (b)(6) of this section, in addition to the manual reset. It is important that locomotives equipped with an alerter adhere to minimum performance standards to ensure that the alerter serves its intended safety function. Utilizing several different reset options for the warning timing cycle increases the effectiveness of the alerter, as it would require differentiated cognitive actions by the operator. This will help prevent the operator from repeating the same reset many times as a reflex, without having full awareness of the action.

FRA believes that tailoring the alerter standard to a minimum operational speed will permit operational flexibility while maintaining safety. Many freight railroads only operate over small territories. They generally move freight equipment between two industries or interchange traffic with other, larger railroads. For these operations, the advantages of and the ability to move at higher speeds are non-existent. Moreover, movements at these lower speeds greatly reduce the risk of injury to the public and damage to equipment. For these reasons, there is a reduced safety need for requiring alerters on locomotives conducting these shorter low speed movements.

Proposed paragraph (f) would ensure that the locomotive alerter on the controlling locomotive is always tested prior to being used as the controlling locomotive. The test would be required during the trip that the locomotive is used as a controlling locomotive. This requirement would allow the crew to know the alerter functions as intended each time a locomotive becomes the controlling locomotive.

B. Proposed Part 229 Subpart E—Locomotive Electronics

Section 229.301 Purpose and Scope

The purpose of this subpart is to promote the safe design, operation, and maintenance of safety-critical electronic locomotive control systems, subsystems, and components. Safety-critical electronic systems identified in proposed paragraph (a) would include, but would not be limited to: directional control, graduated throttle or speed control, graduated locomotive independent brake application and release, train brake application and release, emergency air brake application and release, fuel shut-off and fire suppression, alerters, wheel slip/slide applications, audible and visual warnings, remote control locomotive systems, remote control transmitters, pacing systems, and speed control systems.

In proposed paragraph (b), FRA emphasizes that when a new or proposed locomotive control system function interfaces or comingles with a safety critical train control system covered by 49 CFR part 236 subpart H or I, the locomotive control system functionality would be required to be addressed in the train control systems Product Safety Plan or the Positive Train Control Safety Plan, as appropriate. FRA recognizes that advances in technology may further eliminate the traditional distinctions between locomotive control and train control functionalities. Indeed, technology advances may provide for opportunities for increased or improved functionalities in train control systems that run concurrent with locomotive control. Train control and locomotive control, however, remain two fundamentally different operations with different objectives. FRA does not intend to restrict the adoption of new locomotive control functions and technologies by imposing regulations on locomotive control systems intended to address safety issues associated with train control.

Section 229.303 Applicability

A safety analysis would be required for new electronic equipment that is deployed for locomotives. However, FRA does not intend to impose retroactive safety analysis requirements for existing equipment. FRA recognizes that railroads and vendors may have already invested large sums of time, effort, and money in the development of new products that were envisioned prior to this proposed rule. Accordingly, FRA intends to clarify that the proposed requirements of this subpart are not retroactive and do not apply to existing equipment that is currently in use. The rule would provide sufficient time for railroads and vendors to realize profits on their investment in new technologies made prior to the adoption of this rule. For that reason, FRA would provide a grace period in proposed paragraphs (a) and (b) to allow the completion of existing new developments. Any system that has not been placed in use by the end of the proposed grace period would be required to comply with the safety analysis requirements. Vendors would be required to identify these projects to

FRA within 6 months after the effective date of this rule. FRA believes this will avoid misunderstandings concerning which systems receive the grace period. FRA would consider any systems not identified to FRA within the 6-month window to be a new product start that would require a safety analysis.

In proposed paragraph (d), FRA makes clear that the exemption is limited in scope. Products that result in degradation of safety or a material increase in safety-critical functionality would not be exempt. Products with slightly different specifications that are used to allow the gradual enhancement of the product's capabilities would not require a full safety analysis, but would require a formal verification and validation to the extent that the changes involve safety-critical functions.

Section 229.305 Definitions

Generally, this proposed section standardizes similar definitions between 49 CFR part 236 subpart H and I, and this part. Although 49 CFR part 236 subpart H and I addresses train control systems, and this subpart addresses locomotive control systems, both reflect the adoption of a risk-based engineering design and review process. The definition section, however, does introduce several new definitions applicable to locomotive control systems.

The first new proposed definition is for "New or next-generation locomotive control system." This term would refer to locomotive control products using technologies or combinations of technologies not in use on the effective date of this regulation, or without established histories of safe practice. Traditional, non-microprocessor systems, as well as microprocessor and software based locomotive control systems, are currently in use. These systems have used existing technologies, existing architectures, or combinations of these to implement their functionality. Development of a safety analysis to accomplish the requirements of this part would require reverse engineering these products. Reverse engineering a product is both time consuming and expensive. Requiring the performance of a safety analysis on existing products would present a large economic burden on both the railroads and the original equipment manufacturers (OEM). The economic burden would likely be significantly less for new combinations of technology and architectures that either implement existing functionality, or implement new functionality. These types of systems lack a proven service history. The safety analysis would mitigate the lack of a proven service history. The fundamental differences make it necessary to clearly distinguished between the two classes of locomotive control systems products.

"Product" means any safety critical locomotive control system processor-based system, subsystem, or component. The proposed definition identifies the covered systems that would require a safety analysis. Generally, locomotive manufactures consider their product to be the entire locomotive. This includes systems and subsystems. In this situation, the manufacturers' extensive knowledge of the product would allow them to conduct a safety analysis on the safety critical elements, including locomotive control systems. Similarly, major suppliers to locomotive manufacturers are also familiar with their own products. They too can clearly identify the safety critical elements and conduct the safety analysis accordingly. However, the same is not necessarily true for suppliers without extensive domain knowledge. These suppliers may not understand that their product requires a safety analysis, or may lack experience to recognize that the subsystems or components of the product are subject to the safety analysis of this part. Accordingly, the proposed definition of "product" indentifies the covered systems requiring a safety analysis.

The proposed definition of "Safety Analysis" would refer to a formal set of documentation that describes in detail all of the safety aspects of the product, including but not limited to procedures for its development, installation, implementation, operation, maintenance, repair, inspection, testing and modification, as well as analyses supporting its safety claims. A Safety Analysis (SA) is similar to the Product Safety Plan (PSP) required by 49 CFR part 236 subpart H or the Positive Train Control Safety Plan (PTCSP) required by 49 CFR part 236 subpart I for signal and train control systems. There is, however, a fundamental difference between the PSP or PTCSP safety analysis, and the SA proposed by this subpart. The PSP requires formal FRA approval and is required prior to the product being placed in use. This difference is rooted in fundamental differences between functionality of signal and train control and locomotive control. Although developers of an SA and a PSP or PTCSP may merge functions to operate together on a common platform, different safety analyses would be required. In order to ensure that there is no confusion between the safety analyses required by 49 CFR part 236 subparts H or I, and the safety analysis required in this subpart, a different definition is being proposed for the SA in this part.

The proposed definition of "Safety-critical," as applied to a function, a system, or any portion thereof, would mean an aspect of the locomotive electronic control system that requires correct performance to provide for the safety of personnel, equipment, environment, or any combination of the three; or the incorrect performance of which could cause a hazardous condition, or allow a hazardous condition which was intended to be prevented by the function or system to exist. This definition is substantially similar to that found in 49 CFR part 236 subparts H and I. FRA recognizes that functionality differs between locomotive control systems and signal and train control systems, and further recognizes that the failure modes, the probabilities of failure, and the specific consequences of a failure differ. Despite these differences, the result is the same, creation of a hazardous condition that could affect the safety of the personnel, equipment, or the environment. The same is also true for systems designed to prevent adverse hazards in either domain locomotive control systems, signal and train control systems, or both. The failure of these types of systems would either create a new hazard, or allow a system intended to prevent a hazard to occur, regardless of domain.

Section 229.307 Safety Analysis

The proposed SA would serve as the principal safety documentation for a safety-critical locomotive control system product. Engineering best practice today recognizes that elimination of all risk is impossible. It recognizes that the traditional design philosophy, adversely affects a product's cost and performance. Consequently, designers have adopted a philosophy of risk management. Under this philosophy, designers consider both the consequences of a failure and the probability of a failure. Designers then select the appropriate risk mitigation technique. The risk mitigation philosophy reduces the impact of risk mitigation on a cost and performance compared to risk avoidance.

Fundamental to the execution of the risk management philosophy is the development and documentation of a SA that closely examines the relationship between consequences of a failure, probability of occurrence, failure modes, and their mitigation strategies. Proposed paragraph (a) of this section clearly recognizes this, and would address this need by requiring the

development of the SA documentation. It also recognizes that some developers of SAs may have little experience in risk-based design. Appendix F, also being proposed in this proceeding, would offer one approach. There are a number of equally effective or better approaches. FRA encourages railroads and OEMs to select an approach best suited to their business model. FRA would consider as acceptable any approach that would be equal to, or more effective than, the one outlined in proposed Appendix F.

Proposed paragraph (b), along with proposed paragraph (a) of this section would further establish a regulatory mandate for risk management design. FRA would require that railroads electing to allow a locomotive control system to be placed in use on its property would be required to ensure that an appropriate SA is completed first.

Generally, only a single SA would be required for a product. Therefore, FRA would recognize as acceptable any appropriate SA done under the auspices of one railroad, or a consortium of railroads. FRA also recognizes that railroads may lack the necessary product familiarity or technical expertise to prepare the SA. FRA anticipates that vendors will accomplish the bulk of preparing the SA in the course of the product development.

FRA also recognizes that product vendors may develop a product prior to its procurement by a railroad. In this situation, FRA would provide review and comment as requested by the vendor. This review by FRA would not represent an endorsement of the product. FRA expects that the vendor would work with a railroad, or a consortium of railroads, for final review and approval of the SA. FRA also wishes to make clear that the safety analysis would only be required for new or next generation locomotive control systems, as defined in § 229.305, or for substantive changes to an existing product. A SA would only be required when safety critical functionality is added or deleted from the product, or if there has been a significant paradigm shift in the underlying systems' architecture or implementation technologies, or a significant departure from widely accepted and service proven industry best past practices. The half-life of microprocessor-based hardware is relatively short, and the associated software is subject to change as technical issues are discovered with existing functionality. FRA anticipates that there will be maintenance-related changes of software, as well as replacement of functionally identical hardware components as exiting hardware undergoes repair or reaches the end of its useful service life. FRA emphasizes that the later type of changes to safety critical products, and changes to non-safety critical products, would not require a SA. The railroads and vendors have generally demonstrated, with a high degree of confidence, that existing systems can safely operate. In response to potential liability issues, railroads have shown they carefully examine the safety of a product prior to placing it in use. FRA fully expects that the railroads would continue to apply the same due diligence to new or next generation systems as they review the SA for these more complex products. Proposed paragraph (b) is intended to limit FRA's review of the SAs. This of course, would not restrict FRA where it appears that due diligence has not been exercised, there are indications of fraud and malfeasance, or the underlying technology and or architecture represent significant departures from existing practice.

In paragraph (b), FRA proposes that the SA would be required to establish with a high degree of confidence that safety-critical functions of the product will operate in a fail-safe manner in the operating environment in which it will be used. FRA anticipates that the railroad and vendor community would exercise due diligence in the design and review process prior to placing the product in use. Due diligence would typically be demonstrated by the completion, review and internal approval of the SA. The railroad would be required to determine that this standard has been met, prior to a product change, or placing a new or next generation product in use.

Paragraph (b) also proposes that the railroads identify appropriate procedures to immediately repair safety-critical functions when they fail. If the procedures are not followed, it would result in a violation for failing to comply with the SA.

Section 229.309 Safety Critical Changes and Failures

Safety critical microprocessors, like any electronics available today, are subject to significant change. To ensure that safe system operations continue in the event of planned changes to the software or hardware maintenance of hardware and software configurations is necessary. Failure to maintain hardware and software configurations increases the probability that unintended consequences will occur during system operation. These unintended consequences do not necessarily reveal themselves on initial installation and operation, but may occur much later.

Not all railroads may experience the same software or hardware faults. The SA developer's software and hardware development, configuration management, and fault tracking play an important role in ensuring system safety. Without an effective configuration management and fault reporting system, it is difficult, if not impossible to evaluate the associated risks. The number of failures experienced by one railroad may not exceed the number of failures identified in the SA; but the aggregate from multiple railroads may. The vendor is best positioned to aggregate identified faults, and is best able to determine that the design and failure assumptions exceed those predicted by the safety analysis. An ongoing relationship between a railroad and its vendor is therefore essential to ensure that problems encountered by the railroad are promptly reported to the vendor for correction, and that problems encountered and reported by other railroads to the vendor are shared with other railroads. Furthermore, changes to the system developed by the vendor must be promptly provided to all railroads in order to eliminate the reported hazard. A formal, contractual relationship would provide the best vehicle for ensuring this relationship. This section proposes to clearly identify the responsibility of railroads, and car owners, to establish such a relationship for both reporting hazards.

In order to accomplish their responsibilities, FRA expects that each railroad would have a configuration tracking system that will allow for the identification and reporting of hardware and software issues, as well as promptly implementing changes to the safety critical systems provided by the vendor regardless of the original reporting source of the problem. This section proposes to require railroads to identify, and create such a system if they have not already done so.

Proposed paragraph (b) would require immediate notification to a railroad of real or potential safety hazards identified by the private car suppliers and private car owners. This would allow affected railroads to take appropriate actions to ensure the safety of rail operations.

In proposed paragraph (c) the private car owner's configuration/revision control measures should be accepted by the railroad that would be using the car and implementing the system. The private car owner may have placed safety critical equipment on their car that is unfamiliar to the railroad using

that car. And the necessary contractual relationship that would be required in proposed paragraph (a)(3) of this section may not exist because the equipment in question is not part of the railroad's inventory. The private car owner would be expected to communicate with the railroad. This proposed requirement is intended to ensure that the safety-functional and safety-critical hazard mitigation processes are not compromised by changes to software or hardware. Reporting responsibilities, as well as the configuration management and tracking responsibilities would also extend to private car owners.

Section 229.311 Review of SAs

In proposed paragraph (a), FRA would require railroads to notify FRA before these locomotive electronic products are placed in use. As discussed above, FRA anticipates that review of the SA and amendments would be the exception, rather than the normal practice. However, FRA believes it would be appropriate to have the opportunity to review products and product changes to ensure safety. FRA would require the opportunity to have products and product changes identified to it, and the opportunity to elect a review. FRA also realizes that development of these products represents a significant financial investment, and that the railroad would like to utilize the products in order to recover its investment.

Proposed paragraph (b) reflects the expectation that FRA would decide whether to review an SA within 60 days after receipt of the requested information. Based on the information provided to FRA, the Associate Administrator for Safety would evaluate the need and scope of any review. Within 60 days of receipt of the notification required in paragraph (a), FRA will either decline to review or request to review. Examples of causes for a review or audit prior to placing the product in use would include products: With unique architectural concepts; that use design or safety assurance concepts considered outside existing accepted practices; and, products that appear to commingle the locomotive control function with a safety-critical train control processing function. FRA may convene technical consultations as necessary to discuss issues related to the design and planned development of the product. Causes for an audit of the SA would include, but are not limited to, such circumstances as a credible allegation of error or fraud, SA assumptions determined to be invalid as a result of in-service experience, one or more unsafe events calling into question the safety analysis, or changes to the product.

The following are some common reasons that FRA would likely need to review a product after it is placed in use: There is a credible allegation of error or fraud; SA assumptions are determined to be invalid as a result of in-service experience; or, the occurrence of one or more unsafe events related to that product.

If FRA elects not to review a product's SA, railroads would be able to put the product immediately in use after notification that FRA elects not to review. In the event that FRA would elect to review, FRA would attempt to complete the review within 120 days. FRA's ability to complete the review within 120 days would depend upon various factors such as: The complexity of the new product or product change, its deviation from current practice, the functionality, the architecture, the extent of interfacing with other systems, and the number of technical consultations required. Products reviewed by FRA under these circumstances may not be placed in use until FRA's review is complete.

Section 229.313 Product Testing Results and Records

This section would require that records of product testing conducted in accordance with this subpart be maintained. To effectively evaluate the degree to which the SA reflects real, as opposed to predicted performance, it is necessary to keep accurate records of performance for the product. In addition to collecting these records, it is also essential for regular comparison of the real performance results with the predicted performance. Thus, in this section FRA proposes that such records be maintained. Where the real performance, as measured by the collected data, exceeds the predicted performance of the SA, FRA proposes that no action would be required. If the real performance is worse than the predicted performance, this section proposes that the railroad take immediate action to improve performance to satisfy the predicted standard. Prompt and effective action would be required to bring the non-compliant system into compliance.

FRA would not expect a railroad to proactively evaluate their systems, and take corrective action prior to the system becoming non-compliant with the predicted performance standard. If an unpredicted hazard would occur the system would be required to be immediately evaluated, and the appropriate corrective action would need to be taken. FRA would not expect a railroad to defer any corrective action. In addition, FRA would not expect a railroad to proactively evaluate their systems, and take corrective action prior to the system becoming non-compliant with the designed performance specifications.

This section proposes to establish a requirement for a railroad to keep detailed records to evaluate the system. However, the railroad may elect to have the system supplier keep these records. There would be many advantages to the later approach, primarily that the vendor would receive an aggregate of the technical issues, making them better positioned to analyze the system performance. Although a railroad may delegate record keeping, the railroad would retain the responsibility for keeping records of performance on their property. The railroads would be responsible for ensuring the safe operation of systems on their property, and would be required to have access to the performance data if they are to carry out their responsibilities under this proposed section.

This section also proposes detailed handling requirements for required records. Proposed paragraph (a) would require specific content in the record. FRA would accept paper records or electronic records. Electronic record keeping would be encouraged as it reduces storage costs, simplifies collection of information, and allows data mining of the collected information. However, to ensure that the electronic records would provide all required information, approval by the Associate Administrator for Safety would be required.

Signatures on paper records would be required to uniquely identify the person certifying the information contained in the record in such a manner that would enable detection of a forgery. Proposed paragraph (a) would also ensure that an electronic signature could be attributable to single individual as reliably as paper records. It would be possible to meet the storage requirement in several different ways. Physical paper records would be expected to be kept at the physical location of the supervising official. Electronic records would be permitted to be either stored locally, or remotely. FRA would have no preference as long as the records are accessible for FRA review.

Proposed paragraph (b) would specify the required retention period for the records. FRA recognizes that retaining records involves a cost to railroads, and appreciates their desire to minimize both the number, and the required retention period. To this end, FRA has identified two different categories of

records, and proposes differing retention periods for each. The first category involves records associated with installation or modification of a system and would contain data required for evaluating the product's performance and compliance to the safety case conditions throughout the life of the product. FRA would consider the life of the product to begin when the product is first placed in use and end with the permanent withdrawal of the product from service. In the event of permanent transfer of the product to another, the receiving railroad would become responsible for maintaining them. This responsibility would continue until the product is completely withdrawn from rail service. The second category of records would address periodic testing and would have a retention period of at least one year, or the periodicity of the subsequent test, whichever is greater. Results obtained by subsequent a test would supersede the earlier test. The earlier test results would be moot for evaluating the current condition.

Regrettably, in some cases, the use of electronic records may not meet the minimum standards required by FRA. Consequently, FRA is proposing procedures for withdrawing authorization to use electronic records in paragraph (c). If FRA finds it necessary to withdraw an authorization, FRA would explain the reason in writing.

Section 229.315 Operation Maintenance Manual

This section proposes to require that each railroad have a manual covering the requirements for the installation, periodic maintenance and testing, modification, and repair of its safety critical locomotive control systems. This manual could be kept in paper or electronic form. It is recommended that electronic copies of the manual be maintained in the same manner as other electronic records kept for this part and that it be included in the railroad's configuration management plan (with the master copy and dated amendments carefully maintained so that the status of instructions to the field as of any given date can be readily determined).

Proposed paragraph (a) would require that the manual be available to both persons required to perform such tasks and to FRA. Proposed paragraph (b) would require that plans necessary for proper maintenance and testing of products be correct, legible, and available where such systems are deployed or maintained. The paragraph also proposes that the manual identify the current version of software installed, revisions, and revision dates. Proposed paragraph (c) would require that the manual identify the hardware, software, and firmware revisions in accordance with the configuration management requirement. Proposed paragraph (d) would require the identification, replacement, handling, and repair of safety critical components in accordance with the configuration management requirements. Finally, proposed paragraph (e) would require the manual be ready for use prior to deployment of the product, and that it is available for FRA review.

Section 229.317 Training and Qualification Program

This section proposes specific parameters for training railroad employees and contractor employees to ensure they have the necessary knowledge and skills to complete their duties related to safety-critical products. Proposed paragraph (a) would require the training to be formally conducted and documented based on educational best practices. Paragraphs (b) and (c) propose that the employer identify employees that will be performing inspection, testing, maintenance, repairing, dispatching, and operating tasks related to the safety critical locomotive systems, and develop a written task analysis for the performance of duties. The employer to identify additional knowledge and skills above those required for basic job performance necessary to perform each task. Work situations often present unexpected challenges, and employees who understand the context within which the job is to be done would be better able to respond with actions that preserve safety. Further, the specific requirements of the job would be better understood; and requirements that are better understood are more likely to be adhered to. Well-informed employees would be less likely to conduct ad hoc troubleshooting; and therefore, should be of greater value in assisting with troubleshooting.

Proposed paragraph (d) would require the employer to develop a training curriculum that includes either classroom, hands-on, or other formally-structured training designed to impart the knowledge and skills necessary to perform each task.

Paragraph (e) proposes a requirement that all persons subject to training requirements and their direct supervisors must successfully complete the training curriculum and pass an examination for the tasks for which they are responsible. Generally, giving appropriate training to each of these employees prior to task assignment would be required. The exception would be when an employee, who has not received the appropriate training, is conducting the task under the direct, on-site supervision of a qualified person.

Proposed paragraph (f) would require periodic refresher training. This periodic training must include classroom, hands-on, computer-based training, or other formally structured training. The intent would be for personnel to maintain the knowledge and skills required to perform their assigned task safely.

Paragraph (g) proposes a requirement to compare and evaluate the effectiveness of training. The evaluation would first determine whether the training program materials and curriculum are imparting the specific skills, knowledge, and abilities to accomplish the stated goals of the training program; and second, determine whether the stated goals of the training program reflect the correct, and current, products and operations.

Paragraph (h) proposes that the railroad must maintain records that designate qualified persons. Records retention would be required until recording new qualifications, or for at least one year after such person(s) leave applicable service. The records would be required to be available for FRA inspection and copying.

Section 229.319 Operating Personnel Training

This section contains proposed minimum training requirements for locomotive engineers and other operating personnel who interact with safety critical locomotive control systems. "Other operating personnel" would refer to onboard train and engine crew members (*i.e.*, conductors, brakemen, and assistant engineers).

Proposed paragraph (a) would require training to contain familiarization with the onboard equipment and the functioning of that equipment as part of and its relationship to other onboard systems under that person's control. The training program would be required to cover all notifications by the system (*i.e.*, onboard displays) and actions or responses to such notifications required by onboard personnel. The training would also be required to address how each action or response ensures proper operation of the system and safe operation of the train.

During system operations emergent conditions could arise which would affect the safe operation of the system. This section would also require operating personnel to be informed as soon as practical after discovery of the

condition, and any special actions required for safe train operations.

Paragraph (b) proposes that for certified locomotive engineers, the training requirements of this section would be required to be integrated into the training requirements of part 240. Although this requirement would only address engineers, in the event of certification of other operating personnel, the expectation that these requirements would be included into their training requirements.

Appendix F—Recommended Practices for Design and Safety Analysis

Appendix F proposes a set of criteria for performing risk management design of locomotive control systems. FRA recognizes that not all safety risks associated with human error can be eliminated by designs, no matter how well trained and skilled the designers, implementers, and operators. The intention of the appendix would be to provide one set of safety guidelines distilled from proven design considerations. There are numerous other approaches to risk management-based design. The basic principles of this appendix capture the lessons learned from the research, design, and implementation of similar technology in other modes of transportation and other industries. The overriding goal of this appendix is to minimize the potential for design-induced error by ensuring that systems are suitable for operators, and their tasks and environment.

FRA believes that new locomotive systems will be in service for a long period. Over time, there will be system modifications from the original design. FRA is concerned subsequent modifications to a product might not conform to the product's original design philosophy. The original designers of products could likely be unavailable after several years of operation of the product. FRA believes mitigating this is most successful by fully explaining and documenting the original design decisions and their rationale. Further, FRA feels that assumption of a long product life cycles during the design and analysis phase will force product designers and users to consider long-term effects of operation. Such a criterion would not be applicable if, for instance, the railroad limited the product's term of proposed use.

Translation of these guidelines into processes helps ensure the safe performance of the product and minimizes failures that would have the potential to affect the safety of railroad operations. Fault paths are essential to establishing failure modes and appropriate mitigations. Failing to identify a fault path can have the effect of making a system seem safer on paper than it actually is. When an unidentified fault path is discovered in service which leads to a previously unidentified safety-relevant hazard, the threshold in the safety analysis is automatically exceeded, and the both the designer and the railroad must take mitigating measures. The frequency of such discoveries relates to the quality of the safety analysis efforts. Safety analyses of poor quality are more likely to lead to in-service discovery of unidentified fault paths. Some of those paths might lead to potential serious consequences, while others might have less serious consequences.

Given technology, cost, and other constraints there are limitations regarding the level of safety obtainable. FRA recognizes this. However, FRA also believes that there are well-established and proven design and analysis techniques that can successfully mitigate these design restrictions. The use of proven safety considerations and concepts is necessary for the development of products. Only by forcing conscious decisions by the designer on risk mitigation techniques adopted, and justifying those choices (and their decision that a mitigation technique is not applicable) does the designer fully consider the implications of those choices. FRA notes that in normal operation, the product design should preclude human errors that cause a safety hazard. In addition to documenting design decisions, describing system requirements within the context of the concept of operations further mitigates against the loss of individual designers. In summary, the recommended approach ensures retention of a body of corporate knowledge regarding the product, and influences on the safety of the design. It also promotes full disclosure of safety risks to minimize or eliminating elements of risk where practical.

C. Proposed Amendments to Part 238

Section 238.105 Train Electronic Hardware and Software Safety

This section proposes the incorporation of existing waivers and addresses certain operational realities. Since the implementation of the Passenger Equipment Safety Standards, FRA has granted one waiver from the requirements of § 238.105(d) (FRA–2004–19396) for 26 EMU bi-level passenger cars operated by Northeastern Illinois Regional Commuter Railroad Corporation (METRA). FRA is in receipt of a second waiver (FRA–2008–0139) for 14 new EMU bi-level passenger cars to be operated by Northern Indiana Commuter Transportation District. There are over 1000 EMU passenger cars (M–7) being operated by Long Island Railroad & Metro-North Commuter Railroad (MNCW) for the past five years that FRA has discovered will need a waiver to be in compliance with § 238.105(d). The MNCW has placed an order for additional 300 plus options, EMU passenger cars (M–8) that will also need a waiver from the requirements of existing § 238.105(d).

The portion of the requirements that these cars' brake systems cannot satisfy is the requirement for a full service brake in the event of hardware/software failure of the brake system or access to direct manual control of the primary braking system both service and emergency braking. The braking system on these cars does not have the full service function but does default to emergency brake application in the event of hardware/software failure of the brake system and the operator has the ability to apply the brake system at an emergency rate from the conductor's valve located in the cab. A slight change to the language in § 238.105 would alleviate the need for these waivers and would not reduce the braking rate of the equipment or the stop distances.

Section 238.309 Periodic Brake Equipment Maintenance

For convenience and clarity, FRA proposes to consolidate locomotive air brake maintenance for conventional locomotives into part 229. No substantive change to the regulation would result. Currently, because conventional locomotives are used in passenger service, certain air brake maintenance requirements are included in the Passenger Equipment Safety Standards contained in part 238. Placing all of the requirements for conventional locomotives in part 229 would make the standards easier to follow and avoid confusion.

The proposed brake maintenance in this section would also extend the intervals at which required brake maintenance is performed for several types of brake systems for non-conventional locomotives. The length of the proposed intervals reflects the results of studies and performance evaluations related to a series of waivers starting in 1981 and continuing to present day. Overall, the type of brake maintenance that would be required would remain the same.

VII. Regulatory Impact and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule has been evaluated in accordance with existing policies and procedures, and determined to be non-significant under both Executive Order 12866 and DOT policies and procedures (44 FR 11034; February 26, 1979). FRA has prepared and placed in the docket a regulatory analysis addressing the economic impact of this proposed rule. Document inspection and copying facilities are available at Room W12–140 on the Ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590.

As part of the regulatory impact analysis FRA has assessed quantitative measurements of cost and benefit streams expected from the adoption of this proposed rule. This analysis includes qualitative discussions and quantitative measurements of costs and benefits of the proposed regulatory text in this rulemaking. The primary costs or burdens in this proposed rule are from the alerter and revised minimum (*i.e.*, cold weather) cab temperature requirements. The savings will accrue from fewer train accidents, future waivers, and waiver renewals. In addition, savings would also accrue from a reduction in downtime for locomotives due to proposed changes to headlight and brake requirements. For the twenty year period the estimated quantified costs have a Present Value (PV) 7% of $7 million. For this period the estimated quantified benefits have a PV, 7% of $7.3 million.

Regulatory Flexibility Act and Executive Order 13272

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and Executive Order 13272 require a review of proposed and final rules to assess their impacts on small entities. An agency must prepare an initial regulatory flexibility analysis (IRFA) unless it determines and certifies that a rule, if promulgated, would not have a significant impact on a substantial number of small entities. FRA is confident that this proposed rule would not impose a significant economic impact on a substantial number of small entities. However, FRA is reserving the final decision on certification for the final rule. Hence, interested parties are invited to submit data and information regarding the potential economic impact that would result from adoption of the proposals in the NPRM. Comments and input that FRA receives during the comment period of this rulemaking will assist the agency in making its final decision. FRA estimates that only 12 percent of the total cost associated with implementing the proposed rule would be borne by small entities and most of that will be the cost for the proposed cab temperature change.

Below FRA provides the process it went through when assessing the potential impacts of this rule on small entities.

1. Reasons for Considering Agency Action

As discussed in earlier sections of the preamble to this rulemaking, in its efforts to update and re-evaluate its current regulations FRA formed an RSAC Working Group to review 49 CFR part 229 and recommend revisions as appropriate. Thus the proposed revisions in this rulemaking serve to update a regulation that was originally promulgated prior to 1980. It will clarify some existing requirements, and incorporate some existing industry standards. In addition it will incorporate some current waivers that some members of the industry have, and some engineering best practices. Most of these revisions add clarity to the rule, reduce industry burden to comply with some requirements, and in some cases streamline or consolidate the FRA requirements. Some revisions are intended to enhance railroad safety.

2. Objectives and Legal Basis for the Proposed Rule

(a) Legal Basis for the Proposed Rule

Railroad locomotive inspection requirements are one of the oldest areas of Federal safety regulations. The primary statutory authority, The Locomotive Inspection Act, was enacted in 1911. Pursuant to that authority, in the area of locomotive safety, FRA has issued regulations found at part 229 addressing topics such as inspections and tests, safety requirements for brake, draft, suspension, and electrical systems, and cabs and cab equipment.

FRA has broad statutory authority to regulate railroad safety. The Locomotive Inspection Act (formerly 45 U.S.C. 22–34, now 49 U.S.C. 20701–20703) prohibits the use of unsafe locomotives and authorizes FRA to issue standards for locomotive maintenance and testing. In order to further FRA's ability to respond effectively to contemporary safety problems and hazards as they arise in the railroad industry, Congress enacted the Federal Railroad Safety Act of 1970 (Safety Act) (formerly 45 U.S.C. 421, 431 *et seq.*, now found primarily in chapter 201 of Title 49). The Safety Act grants the Secretary of Transportation rulemaking authority over all areas of railroad safety (49 U.S.C. 20103(a)) and confers all powers necessary to detect and penalize violations of any rail safety law. This authority was subsequently delegated to the FRA Administrator (49 CFR 1.49) (Until July 5, 1994, the Federal railroad safety statutes existed as separate acts found primarily in title 45 of the United States Code. On that date, all of the acts were repealed, and their provisions were recodified into title 49 of the United States Code).

(b) Objective of the Proposed Rule

This action is taken by FRA in an effort to enhance its safety regulatory program. The proposed revision would update, consolidate, and clarify existing rules, and incorporate existing industry and engineering best practices.

3. Description and Estimate of Small Entities Affected

The "universe" of the entities to be considered generally includes only those small entities that can reasonably be expected to be directly regulated by this action. Two types of small entities are potentially affected by this rulemaking: (1) Small railroads, and (2) governmental jurisdictions of small communities.

"Small entity" is defined in 5 U.S.C. 601. Section 601(3) defines a "small entity" as having the same meaning as "small business concern" under section 3 of the Small Business Act. This includes any small business concern that is independently owned and operated, and is not dominant in its field of operation. Section 601(4) includes not-for-profit enterprises that are independently owned and operated, and are not dominant in their field of operations within the definition of "small entities." Additionally, section 601(5) defines as "small entities" governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000.

The U.S. Small Business Administration (SBA) stipulates "size standards" for small entities. It provides that the largest a for-profit railroad business firm may be (and still classify as a "small entity") is 1,500 employees for "Line-Haul Operating" railroads, and 500 employees for "Short-Line Operating" railroads.[1]

SBA size standards may be altered by Federal agencies in consultation with SBA, and in conjunction with public comment. Pursuant to the authority

[1] "Table of Size Standards," U.S. Small Business Administration, January 31, 1996, 13 CFR part 121. *See also* NAICS Codes 482111 and 482112.

provided to it by SBA, FRA has published a final policy, which formally establishes small entities as railroads that meet the line haulage revenue requirements of a Class III railroad.[2] Currently, the revenue requirements are $20 million or less in annual operating revenue, adjusted annually for inflation. The $20 million limit (adjusted annually for inflation) is based on the Surface Transportation Board's threshold of a Class III railroad carrier, which is adjusted by applying the railroad revenue deflator adjustment.[3] The same dollar limit on revenues is established to determine whether a railroad shipper or contractor is a small entity. FRA is proposing to use this definition for this rulemaking.

(a) Railroads

There are approximately 685 small railroads meeting the definition of "small entity" as described above. FRA estimates that all of these small entities could potentially be impacted by one or more of the proposed changes in this rulemaking. Note, however, that approximately fifty of these railroads are subsidiaries of large short line holding companies with the technical multidisciplinary expertise and resources comparable to larger railroads. It is important to note that many of the changes or additions in this rulemaking will not impact all or many small railroads. The nature of some of the changes would dictate that the impacts primarily fall on large railroads that purchase new and/or electronically advanced locomotives. Small railroads generally do not purchase new locomotives, they tend to buy used locomotives from larger railroads. Also, two of the proposed requirements, *i.e.*, requirements for alerters and RCL standards, would burden very few if any small railroads. The most burdensome requirement for small railroads would be the proposed revisions to cab temperature since older locomotives are less likely to meet the revised standards and small railroads tend to own older locomotives. It is also important to note that the proposed changes only apply to non-steam locomotives. There are some small railroads that own one or more steam locomotives which these changes will not impact. There are a few small railroads that own all or almost all steam locomotives. Most of these entities are either museum railroads or tourist railroads. For these entities this proposed regulations would have very little or no impact. FRA estimates that there are about five small railroads that only own steam locomotives.

(b) Governmental Jurisdictions of Small Communities

Small entities that are classified as governmental jurisdictions would also be affected by the proposals in this rulemaking. As stated above, and defined by SBA, this term refers to governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of less than 50,000. FRA does not expect this group of entities to be impacted.

The rule would apply to governmental jurisdictions or transit authorities that provide commuter rail service—none of which is small as defined above (*i.e.*, no entity serves a locality with a population less than 50,000). These entities also receive Federal transportation funds. Intercity rail service providers Amtrak and the Alaska Railroad Corporation would also be subject to this rule, but they are not small entities and likewise receive Federal transportation funds. While other railroads are subject to this final rule by the application of § 238.3, FRA is not aware of any railroad subject to this rule that is a small entity that will be impacted by this rule.

4. Description of Reporting, Recordkeeping, and Other Compliance Requirements and Impacts on Small Entities Resulting From Specific Requirements

The impacts to small railroads from this rulemaking would primarily result from proposed alerter requirements and cold weather cab temperature change. The rulemaking should result in regulatory relief for many railroads. The proposed rule clarifies some existing sections, adds some existing industry standards, and it incorporates some current waivers.

(a) Remote Control Locomotives § 229.15

FRA proposes to formally codify safety standards for remote control operated locomotives. Such standards should not impact any small railroads. FRA does not know of any small railroads that use RCL operations. In addition, RCL operations are not required to operate a railroad. The conduction of future RCL operations by small railroads would be is a business decision that takes into consideration regulatory costs.

(b) Electronic Recordkeeping § 229.20

This proposed section permits the use of electronic recordkeeping systems related to the maintenance of records related to locomotives. This proposed section does not require electronic recordkeeping. FRA is not aware of any small railroads that would utilize this proposed provision. FRA also anticipates cost savings for any railroad that would utilize the provisions.

(c) Periodic Inspection: General § 229.23

This section would require railroads that choose to maintain and transfer records electronically as provided for in § 229.20, to print the name of the person who performed the inspections, repairs, or certified work on the Form FRA F 6180–49A that is displayed in the cab of each locomotive. As small railroads are not likely to maintain records electronically, the proposed changes to this section would not impact any small railroads.

(d) Test: Every Periodic Inspection § 229.25

Two additional paragraphs are proposed in this section to include inspection requirements for remote control locomotives and locomotive alerters during the 92-day Periodic Inspection. Since almost no small railroads utilize RCL or have locomotives and many small railroad operations would not require alerters, these new paragraphs are not expected to have a significant impact on small railroads. In general, older locomotives, which are less likely to be equipped with alerters, are used for lower speed operations. Small railroads commonly engage in such operations and thus a substantial number would probably not be impacted by the proposed alerter inspection requirement.

(e) Air Brake System Maintenance and Testing § 229.29

This section would be re-titled, and consolidate and better organize existing requirements to improve clarity. Because 49 CFR 229.29 concerns only brakes, it would be re-titled, "Air Brake System Maintenance and Testing" to more accurately reflect the section's content. In addition, the proposed changes to this section would fold the current waivers for air brakes into the regulation. Thus, these changes may seem to add more to the section, but they actually provide longer inspection periods for some air brake systems. This will produces two benefits. First it will produce a cost savings for future waivers and waiver renewals. Second, it will produce a benefit for other entities that happen to have one of these types of air brake systems, and do not currently have a waiver. The length of the proposed intervals reflects the results of studies and performance

[2] *See* 68 FR 24891 (May 9, 2003).

[3] For further information on the calculation of the specific dollar limit, please *see* 49 CFR part 1201.

evaluations related to a series of waivers starting in 1981 and continuing to present day. The proposed changes for this section will not impact many, if any, small railroads. The air brake systems that the proposed provisions cover are systems used by newer locomotives. Since most small railroads do not own newer locomotives, the proposed changes to this section should have no impact on any small entities.

(f) Brakes General § 229.46

FRA proposes to clarify this section, and provide standards for the safe use of a locomotive with an inoperative or ineffective automatic or independent brake. The proposal would not require the automatic or independent brake to be repaired. However, the requirement to place a tag on the isolation switch would notify the crew that the locomotive could be used only according to § 229.46(b) until it is repaired. Basically under the current rule such a locomotive could only be moved under the requirements of § 229.9, until the next daily inspection or a location where repairs could be made. With the proposed requirement the locomotive can continue to be utilized in a non-lead position until repaired or until it receives a periodic inspection. This proposed change is expected to produce cost savings for railroads and therefore is not expected to impose any negative burdens on small railroads.

(g) Steam Generator Inspections and Tests § 229.4

This proposed section is being added to consolidate the steam generator requirements of part 229 into a single section. The proposal would not change the substance of the requirements. Therefore no small railroads will be negatively impacted by the proposed change.

(h) Locomotive Cab Temperature § 229.119

This rulemaking includes a revision to paragraph (d) of § 229.119, Cab Temperature. The proposed rule is increasing the minimum temperature that must be maintained in the locomotive cab from 50 degree to 60 degrees. This proposed change is not one that the RSAC Working Group agreed to. It is based on an FRA recommendation.

FRA estimates that two percent of the locomotive fleet for the industry will need improved maintenance of their heaters. Also FRA estimates that one percent of the locomotive fleet for the industry will require additional heaters installed to meet the proposed requirement. This represents 530 and 265 locomotives, respectively. This requirement would likely affect many yard/switching locomotives of various size railroads. Such locomotives generally tend to be older than most road locomotives. Small railroads would also be impacted because they generally operate older locomotives as well. The cost of adding a heater to a locomotive is about $500. Annual maintenance cost to ensure heaters work as necessary to comply with the higher minimum temperature requirements is estimated at $100 per locomotive per year. The average life expectancy of a heater is about 10 years and many older locomotives could be retired before replacement is necessary. FRA estimates that approximately 60 percent of this cost would be borne by small railroads. This is the most significant cost that would burden small railroads.

(i) Pilots, Snowplows and End Plates; and Headlights §§ 229.123 through 229.125

The proposed rule includes changes to Sections 229.123 for snowplows and endplates and § 229.125 for headlights. The proposed changes for both sections are more permissive, increase the flexibility of the rule, and will serve to decrease the number of waiver requests that the railroad industry submits to FRA. FRA does not see any negative impact being imposed on small entities by the proposed changes in these sections.

(j) Alerters § 229.140

Alerters are common safety devices intended to verify that locomotive engineers remain capable and vigilant to accomplish the tasks that he or she must perform. This proposed section would require locomotives that operate over 25 mph to be equipped with an alerter, and would require the alerter to perform certain functions. FRA is estimating that there will be a regulatory impact from this proposal. However, very few, if any, shortline railroads operate trains at speed that exceed 25 mph. Therefore this proposal is not expected to have an impact on small entities. FRA specifically requests comments regarding this estimate.

(k) Locomotive Electronics, Subpart E

FRA is proposing a new Subpart titled "locomotive electronics." The purpose of this subpart is to promote the safe design, operation, and maintenance of safety-critical electronic locomotive systems, subsystems, and components. It is important to first note that these proposed requirements only apply to new locomotives. Second, the effective date for products in development is delayed by a few additional years. As a practical matter, there are no costs for the requirements of this proposed subpart because it is simply codifying good engineering practices. Since generally small railroads do not purchase new locomotives this proposed new subpart is not expected to have an impact on any small railroads.

5. Identification of Relevant Duplicative, Overlapping, or Conflicting Federal Rules

There are no Federal rules that would duplicate, overlap, or conflict with this proposed rule.

6. Alternatives Considered

FRA has identified no significant alternative to the proposed rule which meets the agency's objective in promulgating this rule, and that would minimize the economic impact of the proposed rule on small entities. As in all aspects of this IRFA, FRA requests comments on this finding of no significant alternative related to small entities. The process by which this proposed rule was developed provided outreach to small entities. As noted earlier in sections I, II, and III of this preamble, this notice was developed in consultation with industry representatives via the RSAC, which includes small railroad representatives. On September 21, 2006, the full RSAC unanimously adopted the Working Group's recommendation on locomotive sanders as its recommendation to FRA. The next twelve Working Group meeting addressed a wide range of locomotive safety issues. Minutes of these meetings have been made part of the docket in this proceeding. On September 10, 2009, after a series of detailed discussions, the RSAC approved and provided recommendations on a wide range of locomotive safety issues including, locomotive brake maintenance, pilot height, headlight operation, danger markings, and locomotive electronics.

Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the new and current information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
229.9–Movement of Non-Complying Locomotives	44 Railroads	21,000 tags	1 minute	350
229.15—Remote Control Locomotives (RCL)—(**New Requirements**).				
—Tagging at Control Stand Throttle	44 Railroads	3,000 tags	2 minutes	100
—Testing and Repair of Operational Control Unit (OCU) on RCL—Records.	44 Railroads	200 testing/repair records.	5 minutes	17
229.17—Accident Reports	44 Railroads	1 report	15 minutes	.25
229.20—Electronic Recordkeeping—Electronic Record of Inspections and Maintenance and Automatic Notification to Railroad that Locomotive is Due for Inspection (**New Requirement**).	44 Railroads	21,000 notifications	1 second	6
229.21—Daily Inspection	720 Railroads	6,890,000 records	16 or 18 min.	1,911,780
—MU Locomotives: Written Reports	720 Railroads	250 reports	13 minutes	54
Form FRA F 6180.49A Locomotive Inspection/Repair Record.	720 Railroads	4,000 forms	2 minutes	133
210.31—Main Reservoir Tests—Form FRA F 6180.49A	720 Railroads	19,000 tests/forms	8 hours	152,000
229.23/229.27/229.29/229.31—Periodic Inspection/Annual Biennial Tests/Main Res. Tests—Secondary Records of Information on Form FRA F 6180.49A.	720 Railroads	19,000 records	2 minutes	633
—List of Defects and Repairs on Each Locomotive and Copy to Employees Performing Insp. (**New Requirement**).	720 Railroads	4,000 lists + 4,000 copies.	2 minutes	266
Document to Employees Performing Inspections of All Tests Since Last Periodic Inspection (**New Requirement**).	720 Railroads	19,000 documents	2 minutes	633
229.33—Out-of Use Credit	720 Railroads	500 notations	5 minutes	42
229.25(1)—Test: Every Periodic Insp.—Written Copies of Instruction.	720 Railroads	200 amendments	15 minutes	50
229.25(2)—Duty Verification Readout Record	720 Railroads	4,025 records	90 minutes	6,038
229.25(3)—Pre-Maintenance Test—Failures	720 Railroads	700 notations	30 minutes	350
229.135(A.)—Removal From Service	720 Railroads	1,000 tags	1 minute	17
229.135(B.)—Preserving Accident Data	720 Railroads	10,000 reports	15 minutes	2,500
229.27—Annual Tests	720 Railroads	700 test records	90 minutes	1,050
229.29—Air Brake System Maintenance and Testing (**New Requirement**)—Air Flow Meter Testing—Record.	720 Railroads	88,000 tests/records	15 seconds	367
229.46—Brakes General—Tagging Isolation Switch of Locomotive That May Only Be Used in Trailing Position (**New Requirement**).	720 Railroads	2,100 tags	2 minutes	70
229.85—Danger Markings on All Doors, Cover Plates, or Barriers.	720 Railroads	1,000 decals	1 minute	17
229.123—Pilots, Snowplows, End Plates—Markings—Stencilling (**New Requirement**).	720 Railroads	20 stencilling	2 minutes	1
—Notation on Form FRA F 6180.49A for Pilot, Snowplows, or End Plate Clearance Above Six Inches (**New Requirement**).	720 Railroads	20 notations	2 minutes	1
229.135—Event Recorders	720 Railroads	1,000 Certified Memory Modules.	2 hours	2,000
229.135(b)(5)—Equipment Requirements—Remanufactured Locomotives with *Certified* Crashworthy Memory Module.				
NEW REQUIREMENTS—SUBPART E—LOCOMOTIVE ELECTRONICS				
229.303—Requests to FRA for Approval of On-Track Testing of Products Outside a Test Facility.	720 Railroads	20 requests	8 hours	160
—Identification to FRA of Products Under Development	720 Railroads/3 Manufacturers.	20 products	2 hours	40
229.307—Safety Analysis by RR of Each Product Developed.	720 Railroads	300 analyses	240 hours	72,000
229.309—Notification to FRA of Safety-Critical Change in Product.	720 Railroads	10 notification	16 hours	160
Report to Railroad by Product Suppliers/Private Equipment Owners of Previously Unidentified Hazards of a Product.	3 Manufacturers	10 reports	8 hours	80
229.311—Review of Safety Analyses (SA).				
—Notification to FRA of Railroad Intent to Place Product In Service.	720 Railroads	300 notifications	2 hours	600
—RR Documents That Demonstrate Product Meets Safety Requirements of the SA for the Life-Cycle of Product.	720 Railroads	300 documents	2 hours	600
—RR Database of All Safety Relevant Hazards Encountered with Product Placed in Service.	720 Railroads	300 databases	4 hours	1,200
—Written Reports to FRA If Frequency of Safety-Relevant Hazards Exceeds Threshold.	720 Railroads	10 reports	2 hours	20
—Final Reports to FRA on Countermeasures to Reduce Frequency of Safety-Relevant Hazard(s).	720 Railroads	10 reports	4 hours	40
229.313—Product Testing Results—Records	720 Railroads	120,000 records	5 minutes	10,000

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
229.315—Operations and Maintenance Manual—All Product Documents.	720 Railroads	300 manuals	40 hours	12,000
—Configuration Management Control Plans	720 Railroads	300 plans	8 hours	2,400
—Identification of Safety-Critical Components	720 Railroads	60,000 components	5 minutes	5,000
229.317—Product Training and Qualifications Program	720 Railroads	300 programs	40 hours	12,000
—Product Training of Individuals	720 Railroads	10,000 trained employees.	30 minutes	5,000
—Refresher Training	720 Railroads	1,000 trained employees.	20 minutes	333
—RR Regular and Periodic Evaluation of Effectiveness of Training Program.	720 Railroads	300 evaluations	4 hours	1,200
—Records of Qualified Individuals	727 Railroads	10,000 records	10 minutes	1,667
Appendix F—Guidance for Verification and Validation of Product—Third Party Assessment.	720 Railroads/3 Manufacturers.	1 assessment	4,000 hours	4,000
—Reviewer Final Report	720 Railroads/3 Manufacturers.	1 report	80 hours	80

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning: Whether these information collection requirements are necessary for the proper performance of the functions of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB, contact Mr. Robert Brogan, Office of Safety, Information Clearance Officer, at 202–493–6292, or Ms. Kimberly Toone, Office of Information Technology, at 202–493–6139.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Mr. Robert Brogan or Ms. Kimberly Toone, Federal Railroad Administration, 1200 New Jersey Avenue, SE., 3rd Floor, Washington, DC 20590. Comments may also be submitted via e-mail to Mr. Brogan or Ms. Toone at the following address: *Robert.Brogan@dot.gov; Kimberly.Toone@dot.gov*

OMB is required to make a decision concerning the collection of information requirements contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

FRA is not authorized to impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of the final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

Federalism Implications

FRA has analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 13132, issued on August 4, 1999, which directs Federal agencies to exercise great care in establishing policies that have federalism implications. *See* 64 FR 43255. This proposed rule will not have a substantial effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government. This proposed rule will not have federalism implications that impose any direct compliance costs on State and local governments.

FRA notes that the RSAC, which endorsed and recommended the majority of this proposed rule to FRA, has as permanent members, two organizations representing State and local interests: AASHTO and the Association of State Rail Safety Managers (ASRSM). Both of these State organizations concurred with the RSAC recommendation endorsing this proposed rule. The RSAC regularly provides recommendations to the FRA Administrator for solutions to regulatory issues that reflect significant input from its State members. To date, FRA has received no indication of concerns about the Federalism implications of this rulemaking from these representatives or of any other representatives of State government. Consequently, FRA concludes that this proposed rule has no federalism implications, other than the preemption of state laws covering the subject matter of this proposed rule, which occurs by operation of law as discussed below.

This proposed rule could have preemptive effect by operation of law under certain provisions of the Federal railroad safety statutes, specifically the former Federal Railroad Safety Act of 1970 (former FRSA), repealed and recodified at 49 U.S.C. 20106, and the former Locomotive Boiler Inspection Act at 45 U.S.C. 22–34, repealed and recodified at 49 U.S.C. 20701–20703. The former FRSA provides that States may not adopt or continue in effect any law, regulation, or order related to railroad safety or security that covers the subject matter of a regulation prescribed or order issued by the Secretary of Transportation (with respect to railroad safety matters) or the Secretary of Homeland Security (with respect to railroad security matters), except when the State law, regulation, or order qualifies under the "local safety or security hazard" exception to section 20106. Moreover, the former LIA has been interpreted by the Supreme Court as preempting the field concerning locomotive safety. *See Napier* v. *Atlantic Coast Line R.R.*, 272 U.S. 605 (1926).

Environmental Impact

FRA has evaluated this proposed regulation in accordance with its "Procedures for Considering Environmental Impacts" (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National

Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this proposed regulation is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. 64 FR 28547, May 26, 1999. Section 4(c)(20) reads as follows: (c) Actions categorically excluded. Certain classes of FRA actions have been determined to be categorically excluded from the requirements of these Procedures as they do not individually or cumulatively have a significant effect on the human environment. Promulgation of railroad safety rules and policy statements that do not result in significantly increased emissions or air or water pollutants or noise or increased traffic congestion in any mode of transportation are excluded.

In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this proposed regulation is not a major Federal action significantly affecting the quality of the human environment.

Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency "shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law)." Section 202 of the Act (2 U.S.C. 1532) further requires that "before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement" detailing the effect on State, local, and tribal governments and the private sector. For the year 2010, this monetary amount of $100,000,000 has been adjusted to $140,800,000 to account for inflation. This proposed rule would not result in the expenditure of more than $140,800,000 by the public sector in any one year, and thus preparation of such a statement is not required.

Privacy Act

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any agency docket by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

List of Subjects

49 CFR Part 229

Locomotive headlights, Locomotives, Railroad safety.

49 CFR Part 238

Passenger equipment, Penalties, Railroad safety, Reporting and recordkeeping requirements.

The Proposed Rule

For the reasons discussed in the preamble, FRA proposes to amend parts 229 and 238 of chapter II, subtitle B of Title 49, Code of Federal Regulations, as follows:

PART 229—[AMENDED]

1. The authority citation for part 229 continues to read as follows:

Authority: 49 U.S.C. 20102–03, 20107, 20133, 20137–38, 20143, 20701–03, 21301–02, 21304; 28 U.S.C. 2401, note; and 49 CFR 1.49.

2. Section 229.5 is amended by adding in alphabetical order the following definitions to read as follows:

§ 229.5 Definitions.

* * * * *

Alerter means a device or system installed in the locomotive cab to promote continuous, active locomotive engineer attentiveness by monitoring select locomotive engineer-induced control activities. If fluctuation of a monitored locomotive engineer-induced control activity is not detected within a predetermined time, a sequence of audible and visual alarms is activated so as to progressively prompt a response by the locomotive engineer. Failure by the locomotive engineer to institute a change of state in a monitored control, or acknowledge the alerter alarm activity through a manual reset provision, results in a penalty brake application that brings the locomotive or train to a stop.

* * * * *

Assignment Address means a unique identifier of the RCL that insures that only the OCU's linked to a specific RCL can command that RCL.

* * * * *

Controlling locomotive means a locomotive from where the operator controls the traction and braking functions of the locomotive or locomotive consist, normally the lead locomotive.

* * * * *

Locomotive Control Unit (LCU) means a system onboard an RCL that communicates via a radio link which receives, processes, and confirms commands from the OCU, which directs the locomotive to execute them.

* * * * *

Operator Control Unit (OCU) means a mobile unit that communicates via a radio link the commands for movement (direction, speed, braking) or for operations (bell, horn, sand) to an RCL.

* * * * *

Remote Control Locomotive (RCL) means a remote control locomotive that, through use of a radio link can be operated by a person not physically within the confines of the locomotive cab. For purposes of this definition, the term RCL does not refer to a locomotive or group of locomotives remotely controlled from the lead locomotive of a train, as in a distributed power arrangement.

Remote Control Operator (RCO) means a person who utilizes an OCU in connection with operations involving a RCL with or without cars.

Remote Control Pullback Protection means a function of a RCL that enforces speeds and stops in the direction of pulling movement.

* * * * *

3. Section 229.7 is revised to read as follows:

§ 229.7 Prohibited acts and penalties.

(a) Federal Rail Safety Law (49 U.S.C. 20701–20703) makes it unlawful for any carrier to use or permit to be used on its line any locomotive unless the entire locomotive and its appurtenances—

(1) Are in proper condition and safe to operate in the service to which they are put, without unnecessary peril to life or limb; and

(2) Have been inspected and tested as required by this part.

(b) Any person (including but not limited to a railroad; any manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of

railroad equipment, track, or facilities; any employee of such owner, manufacturer, lessor, lessee, or independent contractor) who violates any requirement of this part or of the Federal Rail Safety Laws or causes the violation of any such requirement is subject to a civil penalty of at least $650, but not more than $25,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $100,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. Appendix B of this part contains a statement of agency civil penalty policy.

(c) Any person who knowingly and willfully falsifies a record or report required by this part is subject to criminal penalties under 49 U.S.C. 21311.

4. Section 229.15 is added to read as follows:

§ 229.15 Remote control locomotives.

(a) *Design and operation.* (1) Each locomotive equipped with a locomotive control unit (LCU) shall respond only to the operator control units (OCUs) assigned to that receiver.

(2) If one or more OCUs are assigned to a LCU, the LCU shall respond only to the OCU that is in primary command. If a subsequent OCU is assigned to a LCU, the previous assignment will be automatically cancelled.

(3) If more than one OCU is assigned to a LCU, the secondary OCUs' man down feature, bell, horn, and emergency brake application functions shall remain active.

The remote control system shall be designed so that if the signal from the OCU to the RCL is interrupted for a set period not to exceed five seconds, the remote control system shall cause:

(i) A full service application of the locomotive and train brakes; and

(ii) The elimination of locomotive tractive effort.

(4) Each OCU shall be designed to control only one RCL at a time. OCUs having the capability to control more than one RCL shall have a means to lock in one RCL "assignment address" to prevent simultaneous control over more than one locomotive.

(5) If an OCU is equipped with an "on" and "off" switch, when the switch is moved from the "on" to the "off" position, the remote control system shall cause:

(i) A full service application of the locomotive train brakes; and

(ii) The elimination of locomotive tractive effort.

(6) Each RCL shall have a distinct and unambiguous audible or visual warning device that indicates to nearby personnel that the locomotive is under active remote control operation.

(7) When the main reservoir pressure drops below 90 psi, a RCL shall initiate a full service application of the locomotive and train brakes, and eliminate locomotive tractive effort.

(8) When the air valves and the electrical selector switch on the RCL are moved from manual to remote control mode or from remote control to manual mode, an emergency application of the locomotive and train brakes shall be initiated.

(9) Operating control handles located in the RCL cab shall be removed, pinned in place, protected electronically, or otherwise rendered inoperable as necessary to prevent movement caused by the RCL's cab controls while the RCL is being operated by remote control.

(10) The RCL system (both the OCU and LCU), shall be designed to perform a self diagnostic test of the electronic components of the system. The system shall be designed to immediately effect a full service application of the locomotive and train brakes and the elimination of locomotive tractive effort in the event a failure is detected.

(11) Each RCL shall be tagged at the locomotive control stand throttle indicating the locomotive is being used in a remote control mode. The tag shall be removed when the locomotive is placed back in manual mode.

(12) Each OCU shall have the following controls and switches and shall be capable of performing the following functions:

(i) Directional control;

(ii) Throttle or speed control;

(iii) Locomotive independent air brake application and release;

(iv) Automatic train air brake application and release control;

(v) Audible warning device control (horn);

(vi) Audible bell control, if equipped;

(vii) Sand control (unless automatic);

(viii) Bi-directional headlight control;

(ix) Emergency air brake application switch;

(x) Generator field switch or equivalent to eliminate tractive effort to the locomotive;

(xi) Audio/visual indication of wheel slip/slide;

(xii) Audio indication of movement of the RCL; and

(xiv) Require at least two separate actions by the RCO to begin movement of the RCL.

(13) Each OCU shall be equipped with the following features:

(i) A harness with a breakaway safety feature;

(ii) An operator alertness device that requires manual resetting or its equivalent.

The alertness device shall incorporate a timing sequence not to exceed 60 seconds. Failure to reset the switch within the timing sequence shall cause an application of the locomotive and train brakes, and the elimination of locomotive tractive effort.

(iii) A tilt feature that, when tilted to a predetermined angle, shall cause:

(A) An emergency application of the locomotive and train brakes, and the elimination of locomotive tractive effort; and

(B) If the OCU is equipped with a tilt bypass system that permits the tilt protection feature to be temporarily disabled, this bypass feature shall deactivate within 15 seconds on the primary OCU and within 60 seconds for all secondary OCUs, unless reactivated by the RCO.

(14) Each OCU shall be equipped with one of the following control systems:

(A) An automatic speed control system with a maximum 15 mph speed limiter; or

(B) A graduated throttle and brake. A graduated throttle and brake control system built after (90 days after date of rule) shall be equipped with a speed limiter to a maximum of 15 mph.

(15) RCL systems built after (DATE 90 DAYS AFTER EFFECTIVE DATE OF THE FINAL RULE) shall be equipped to automatically notify the railroad in the event the RCO becomes incapacitated or OCU tilt feature is activated.

(16) RCL systems built prior to (DATE 90 DAYS AFTER EFFECTIVE DATE OF THE FINAL RULE) not equipped with automatic notification of operator incapacitated feature may not be utilized in one-person operation.

(b) *Inspection, testing, and repair.* (1) Each time an OCU is linked to a RCL, and at the start of each shift, a railroad shall test:

(i) The air brakes and the OCU's safety features, including the tilt switch and alerter device; and

(ii) The man down/tilt feature automatic notification.

(2) An OCU shall not continue in use with any defective safety feature identified in paragraph (b)(1) of this section.

(3) A defective OCU shall be tracked under its own identification number assigned by the railroad. Records of repairs shall be maintained by the railroad and made available to FRA upon request.

(4) Each time an RCL is placed in service and at the start of each shift locomotives that utilize a positive train stop system shall perform a conditioning run over tracks that the positive train stop system is being utilized on to ensure that the system functions as intended.

5. Section 229.19 is revised to read as follows:

§ 229.19 Prior waivers.

Waivers from any requirement of this part, issued prior to January 12, 2011, shall terminate on the date specified in the letter granting the waiver. If no date is specified, then the waiver shall automatically terminate on January 12, 2016.

6. Section 229.20 is added to subpart A to read as follows:

§ 229.20 Electronic record keeping.

(a) *General.* For purposes of compliance with the recordkeeping requirements of this part, except for the daily inspection record maintained on the locomotive required by § 229.21, the cab copy of Form FRA F 6180–49–A required by § 229.23, the fragmented air brake maintenance record required by § 229.27, and records required under § 229.9, a railroad may create, maintain, and transfer any of the records required by this part through electronic transmission, storage, and retrieval provided that all of the requirements contained in this section are met.

(b) *Design requirements.* Any electronic record system used to create, maintain, or transfer a record required to be maintained by this part shall meet the following design requirements:

(1) The electronic record system shall be designed such that the integrity of each record is maintained through appropriate levels of security such as recognition of an electronic signature, or other means, which uniquely identify the initiating person as the author of that record. No two persons shall have the same electronic identity;

(2) The electronic system shall ensure that each record cannot be modified, or replaced, once the record is transmitted;

(3) Any amendment to a record shall be electronically stored apart from the record which it amends. Each amendment to a record shall uniquely identify the person making the amendment;

(4) The electronic system shall provide for the maintenance of inspection records as originally submitted without corruption or loss of data; and

(5) Policies and procedures shall be in place to prevent persons from altering electronic records, or otherwise interfering with the electronic system.

(c) *Operational requirements.* Any electronic record system used to create, maintain, or transfer a record required to be maintained by this part shall meet the following operating requirements:

(1) The electronic storage of any record required by this part shall be initiated by the person performing the activity to which the record pertains within 24 hours following the completion of the activity; and

(2) For each locomotive for which records of inspection or maintenance required by this part are maintained electronically, the electronic record system shall automatically notify the railroad each time the locomotive is due for an inspection, or maintenance that the electronic system is tracking. The automatic notification tracking requirement does not apply to daily inspections.

(d) *Accessibility and availability requirements.* Any electronic record system used to create, maintain, or transfer a record required to be maintained by this part shall meet the following access and availability requirements:

(1) The carrier shall provide FRA with all electronic records maintained for compliance with this part for any specific locomotives at any mechanical department terminal upon request;

(2) Paper copies of electronic records and amendments to those records that may be necessary to document compliance with this part, shall be provided to FRA for inspection and copying upon request. Paper copies shall be provided to FRA no later than 15 days from the date the request is made;

(3) Inspection records required by this part shall be available to persons who performed the inspection and to persons performing subsequent inspections on the same locomotive.

7. Section 229.23 is revised to read as follows:

§ 229.23 Periodic inspection: General.

(a) Each locomotive shall be inspected at each periodic inspection to determine whether it complies with this part. Except as provided in § 229.9, all non-complying conditions shall be repaired before the locomotive is used. Except as provided in § 229.33, the interval between any two periodic inspections may not exceed 92 days. Periodic inspections shall only be made where adequate facilities are available. At each periodic inspection, a locomotive shall be positioned so that a person may safely inspect the entire underneath portion of the locomotive.

(b) Each new locomotive shall receive an initial periodic inspection before it is used. Except as provided in § 229.33, each locomotive shall receive an initial periodic inspection within 92 days of the last 30-day inspection performed under the prior rules (49 CFR 230.331 and 230.451). At the initial periodic inspection, the date and place of the last tests performed that are the equivalent of the tests required by §§ 229.27, 229.29, and 229.31 shall be entered on Form FRA F 6180–49A. These dates shall determine when the tests first become due under §§ 229.27, 229.29, and 229.31. Out of use credit may be carried over from Form FRA F 6180–49 and entered on Form FRA F 6180–49A.

(c) Each periodic inspection shall be recorded on Form FRA F 6180–49A. The form shall be signed by the person conducting the inspection and certified by that person's supervisor that the work was done. The form shall be displayed under a transparent cover in a conspicuous place in the cab of each locomotive. A railroad maintaining and transferring records as provided for in § 229.20 shall print the name of the person who performed the inspections, repairs, or certified work on the Form FRA F 6180–49A that is displayed in the cab of each locomotive.

(d) At the first periodic inspection in each calendar year the carrier shall remove from each locomotive Form FRA F 6180–49A covering the previous calendar year. If a locomotive does not receive its first periodic inspection in a calendar year before April 2 because it is out of use, the form shall be promptly replaced. The Form FRA F 6180–49A covering the preceding year for each locomotive, in or out of use, shall be signed by the railroad official responsible for the locomotive and filed as required in § 229.23(f). The date and place of the last periodic inspection and the date and place of the last tests performed under §§ 229.27, 229.29, and 229.31 shall be transferred to the replacement Form FRA F 6180–49A.

(e) The railroad mechanical officer who is in charge of a locomotive shall maintain in his office a secondary record of the information reported on Form FRA F 6180–49A. The secondary record shall be retained until Form FRA F 6180–49A has been removed from the locomotive and filed in the railroad office of the mechanical officer in charge of the locomotive. If the Form FRA F 6180–49A removed from the locomotive is not clearly legible, the secondary record shall be retained until the Form FRA F 6180–49A for the succeeding year is filed. The Form F 6180–49A removed from a locomotive shall be retained until the Form FRA F

6180–49A for the succeeding year is filed.

(f) The railroad shall maintain, and provide employees performing inspections under this section with, a list of the defects and repairs made on each locomotive over the last ninety-two days;

(g) The railroad shall provide employees performing inspections under this section with a document containing all tests conducted since the last periodic inspection, and procedures needed to perform the inspection.

8. Section 229.25 is amended by revising paragraphs (d) and (e), and adding paragraph (f) to read as follows:

§ 229.25 Test: Every periodic inspection.

* * * * *

(d) *Event recorder.* A microprocessor-based self-monitoring event recorder, if installed, is exempt from periodic inspection under paragraphs (d)(1) through (5) of this section and shall be inspected annually as required by § 229.27(c). Other types of event recorders, if installed, shall be inspected, maintained, and tested in accordance with instructions of the manufacturer, supplier, or owner thereof and in accordance with the following criteria:

(1) A written or electronic copy of the instructions in use shall be kept at the point where the work is performed and a hard-copy version, written in the English language, shall be made available upon request to FRA.

(2) The event recorder shall be tested before any maintenance work is performed on it. At a minimum, the event recorder test shall include cycling, as practicable, all required recording elements and determining the full range of each element by reading out recorded data.

(3) If the pre-maintenance test reveals that the device is not recording all the specified data and that all recordings are within the designed recording elements, this fact shall be noted, and maintenance and testing shall be performed as necessary until a subsequent test is successful.

(4) When a successful test is accomplished, a copy of the data-verification results shall be maintained in any medium with the maintenance records for the locomotive until the next one is filed.

(5) A railroad's event recorder periodic maintenance shall be considered effective if 90 percent of the recorders on locomotives inbound for periodic inspection in any given calendar month are still fully functional; maintenance practices and test intervals shall be adjusted as necessary to yield effective periodic maintenance.

(e) *Remote control locomotive.* Remote control locomotive system components that interface with the mechanical devices of the locomotive shall be tested including, but not limited to, air pressure monitoring devices, pressure switches, and speed sensors.

(f) *Alerters.* The alerter shall be tested, and all automatic timing resets shall function as intended.

9. Section 229.27 is revised to read as follows:

§ 229.27 Annual tests.

(a) All testing under this section shall be performed at intervals that do not exceed 368 calendar days.

(b) Load meters that indicate current (amperage) being applied to traction motors shall be tested. Each device used by the engineer to aid in the control or braking of the train or locomotive that provides an indication of air pressure electronically shall be tested by comparison with a test gauge or self-test designed for this purpose. An error greater than five percent or greater than three pounds per square inch shall be corrected. The date and place of the test shall be recorded on Form FRA F 6180–49A, and the person conducting the test and that person's supervisor shall sign the form.

(c) A microprocessor-based event recorder with a self-monitoring feature equipped to verify that all data elements required by this part are recorded, requires further maintenance and testing only if either or both of the following conditions exist:

(1) The self-monitoring feature displays an indication of a failure. If a failure is displayed, further maintenance and testing must be performed until a subsequent test is successful. When a successful test is accomplished, a record, in any medium, shall be made of that fact and of any maintenance work necessary to achieve the successful result. This record shall be available at the location where the locomotive is maintained until a record of a subsequent successful test is filed; or,

(2) A download of the event recorder, taken within the preceding 30 days and reviewed for the previous 48 hours of locomotive operation, reveals a failure to record a regularly recurring data element or reveals that any required data element is not representative of the actual operations of the locomotive during this time period. If the review is not successful, further maintenance and testing shall be performed until a subsequent test is successful. When a successful test is accomplished, a record, in any medium, shall be made of that fact and of any maintenance work necessary to achieve the successful result. This record shall be kept at the location where the locomotive is maintained until a record of a subsequent successful test is filed. The download shall be taken from information stored in the certified crashworthy crash hardened event recorder memory module if the locomotive is so equipped.

10. Section 229.29 is revised to read as follows:

§ 229.29 Air brake system calibration, maintenance, and testing.

(a) A locomotive's air brake system shall receive the calibration, maintenance, and testing as prescribed in this section. The level of maintenance and testing and the intervals for receiving such maintenance and testing of locomotives with various types of air brake systems shall be conducted in accordance with paragraphs (d) through (f) of this section. Records of the maintenance and testing required in this section shall be maintained in accordance with paragraph (g) of this section.

(b) Except for DMU or MU locomotives covered under § 238.309 of this chapter, the air flow method (AFM) indicator shall be calibrated in accordance with section 232.205(c)(1)(iii) at intervals not to exceed 92 days, and records shall be maintained as prescribed in paragraph (g)(1) of this section.

(c) Except for DMU or MU locomotives covered under § 238.309 of this chapter, the extent of air brake system maintenance and testing that is required on a locomotive shall be in accordance with the following levels:

(1) *Level one:* Locomotives shall have the filtering devices or dirt collectors located in the main reservoir supply line to the air brake system cleaned, repaired, or replaced.

(2) *Level two:* Locomotives shall have the following components cleaned, repaired, and tested: Brake cylinder relay valve portions; main reservoir safety valves; brake pipe vent valve portions; and, feed and reducing valve portions in the air brake system (including related dirt collectors and filters).

(3) *Level three:* Locomotives shall have the components identified in this paragraph removed from the locomotive and disassembled, cleaned and lubricated (if necessary), and tested. In addition, all parts of such components that can deteriorate within the inspection interval as defined in

paragraphs (d) through (f) of this section shall be replaced and tested. The components include: All pneumatic components of the locomotive equipment's brake system that contain moving parts, and are sealed against air leaks; all valves and valve portions; electric-pneumatic master controllers in the air brake system; and all air brake related filters and dirt collectors.

(d) Except for MU locomotives covered under § 238.309 of this chapter, all locomotives shall receive level one air brake maintenance and testing as described in this section at intervals that do not exceed 368 days.

(e) Locomotives equipped with an air brake system not specifically identified in paragraphs (f)(1) through (3) of this section shall receive level two air brake maintenance and testing as described in this section at intervals that do not exceed 368 days and level three air brake maintenance and testing at intervals that do not exceed 736 days.

(f) Level two and level three air brake maintenance and testing shall be performed on each locomotive identified in this paragraph at the following intervals:

(1) At intervals that do not exceed 1,104 days for a locomotive equipped with a 26–L or equivalent brake system;

(2) At intervals that do not exceed 1,472 days for locomotives equipped with an air dryer and a 26–L or equivalent brake system and for locomotives not equipped with an air compressor and that are semi-permanently coupled and dedicated to locomotives with an air dryer; or

(3) At intervals that do not exceed 1,840 days for locomotives equipped with CCB–1, CCB–2, CCB–26, EPIC 1 (formerly EPIC 3102), EPIC 3102D2, EPIC 2, KB–HS1, or Fastbrake brake systems.

(g) Records of the air brake system maintenance and testing required by this section shall be generated and maintained in accordance with the following:

(1) The date of AFM indicator calibration shall be recorded and certified in the remarks section of Form F6180–49A.

(2) The date and place of the cleaning, repairing and testing required by this section shall be recorded on Form FRA F6180–49A, and the work shall be certified. A record of the parts of the air brake system that are cleaned, repaired, and tested shall be kept in the railroad's files or in the cab of the locomotive.

(3) At its option, a railroad may fragment the work required by this section. In that event, a separate record shall be maintained under a transparent cover in the cab. The air record shall include: The locomotive number; a list of the air brake components; and the date and place of the inspection and testing of each component. The signature of the person performing the work and the signature of that person's supervisor shall be included for each component. A duplicate record shall be maintained in the railroad's files.

11. Section 229.46 is revised to read as follows:

§ 229.46 Brakes: General.

(a) Before each trip, the railroad shall know the following:

(1) The locomotive brakes and devices for regulating pressures, including but not limited to the automatic and independent brake control systems, operate as intended; and

(2) The water and oil have been drained from the air brake system of all locomotives in the consist.

(b) A locomotive with an inoperative or ineffective automatic or independent brake control system will be considered to be operating as intended for purposes of paragraph (a) of this section, if all of the following conditions are met:

(1) The locomotive is in a trailing position and is not the controlling locomotive in a distributed power train consist;

(2) The railroad has previously determined, in conjunction with the locomotive and/or air brake manufacturer, that placing such a locomotive in trailing position adequately isolates the non-functional valves so as to allow safe operation of the brake systems from the controlling locomotive;

(3) If deactivation of the circuit breaker for the air brake system is required, it shall be specified in the railroad's operating rules;

(4) A tag shall immediately be placed on the isolation switch of the locomotive giving the date and location and stating that the unit may only be used in a trailing position and may not be used as a lead or controlling locomotive;

(5) The tag required in paragraph (b)(4) of this section remains attached to the isolation switch of the locomotive until repairs are made; and

(6) The inoperative or ineffective brake control system is repaired prior to or at the next periodic inspection.

12. Section 229.85 is revised to read as follows:

§ 229.85 High voltage markings: Doors, cover plates, or barriers.

All doors, cover plates, or barriers providing direct access to high voltage equipment shall be marked "Danger—High Voltage" or with the word "Danger" and the normal voltage carried by the parts so protected.

13. Section 229.114 is added to read as follows:

§ 229.114 Steam generator inspections and tests.

(a) *Periodic steam generator inspection.* Except as provided in § 229.33, each steam generator shall be inspected and tested in accordance with paragraph (d) of this section at intervals not to exceed 92 days, unless the steam generator is isolated in accordance with paragraph (b) of this section. All non-complying conditions shall be repaired or the steam generator shall be isolated as prescribed in paragraph (b) of this section before the locomotive is used.

(b) *Isolation of a steam generator.* A steam generator will be considered isolated if the water suction pipe to the water pump and the leads to the main switch (steam generator switch) are disconnected, and the train line shut-off-valve is wired closed or a blind gasket is applied. Before an isolated steam generator is returned to use, it shall be inspected and tested pursuant to paragraph (d) of this section.

(c) Each periodic steam generator inspection and test shall be recorded on Form FRA F6180–49A required by paragraph § 229.23. When Form FRA F6180–49A for the locomotive is replaced, data for the steam generator inspections shall be transferred to the new Form FRA F6180–49A.

(d) Each periodic steam generator inspection and test shall include the following tests and requirements:

(1) All electrical devices and visible insulation shall be inspected.

(2) All automatic controls, alarms and protective devices shall be inspected and tested.

(3) Steam pressure gauges shall be tested by comparison with a dead-weight tester or a test gauge designed for this purpose. The siphons to the steam gauges shall be removed and their connections examined to determine that they are open.

(4) Safety valves shall be set and tested under steam after the steam pressure gauge is tested.

(e) *Annual steam generator tests.* Each steam generator that is not isolated in accordance with paragraph (b) of this section, shall be subjected to a hydrostatic pressure at least 25 percent above the working pressure and the visual return water-flow indicator shall be removed and inspected. The testing under this paragraph shall be performed at intervals that do not exceed 368 calendar days.

14. Section 229.119 is amended by revising paragraph (d) to read as follows:

§ 229.119 Cabs, floors, and passageways.

* * * * *

(d) Any occupied locomotive cab shall be provided with proper ventilation and with a heating arrangement that maintains a temperature of at least 60 degrees Fahrenheit 6 inches above the center of each seat in the cab compartment.

* * * * *

15. Section 229.123 is revised to read as follows:

§ 229.123 Pilots, snowplows, end plates.

(a) Each lead locomotive shall be equipped with a pilot, snowplow, or end plate that extends across both rails. The minimum clearance above the rail of the pilot, snowplow or end plate shall be 3 inches. Except as provided in paragraph (b) of this section, the maximum clearance shall be 6 inches. When the locomotive is equipped with a combination of the equipment listed in this paragraph, each extending across both rails, only the lowest piece of that equipment must satisfy clearance requirements of this section.

(b) To provide clearance for passing over retarders, locomotives utilized in hump yard or switching service at hump yard locations may have pilot, snowplow, or end plate maximum height of 9 inches.

(1) Each locomotive equipped with a pilot, snowplow, or end plate with clearance above 6 inches shall be prominently stenciled at each end of the locomotive with the words "9-inch Maximum End Plate Height, Yard or Trail Service Only."

(2) When operated in switching service in a leading position, locomotives with a pilot, snowplow, or end plate clearance above 6 inches shall be limited to 10 miles per hour over grade crossings.

(3) Train crews shall be notified in writing of the restrictions on the locomotive, by label or stencil in the cab, or by written operating instruction given to the crew and maintained in the cab of the locomotive.

(4) Pilot, snowplow, or end plate clearance above 6 inches shall be noted in the remarks section of Form FRA 6180–49a.

(5) Locomotives with a pilot, snowplow, or end plate clearance above 6 inches shall not be placed in the lead position when being moved under section § 229.9.

16. Section 229.125 is amended by revising paragraphs (a) and (d)(2) and (3) to read as follows:

§ 229.125 Headlights and auxiliary lights.

(a) Each lead locomotive used in road service shall illuminate its headlight while the locomotive is in use. When illuminated, the headlight shall produce a peak intensity of at least 200,000 candela and produce at least 3,000 candela at an angle of 7.5 degrees and at least 400 candela at an angle of 20 degrees from the centerline of the locomotive when the light is aimed parallel to the tracks. If a locomotive or locomotive consist in road service is regularly required to run backward for any portion of its trip other than to pick up a detached portion of its train or to make terminal movements, it shall also have on its rear a headlight that meets the intensity requirements above. Each headlight shall be aimed to illuminate a person at least 800 feet ahead and in front of the headlight. For purposes of this section, a headlight shall be comprised of either one or two lamps.

(1) If a locomotive is equipped with a single-lamp headlight, the single lamp shall produce a peak intensity of at least 200,000 candela and shall produce at least 3,000 candela at an angle of 7.5 degrees and at least 400 candela at an angle of 20 degrees from the centerline of the locomotive when the light is aimed parallel to the tracks. The following operative lamps meet the standard set forth in this paragraph: A single incandescent PAR–56, 200-watt, 30-volt lamp; a single halogen PAR–56, 200-watt, 30-volt lamp; a single halogen PAR–56, 350-watt, 75-volt lamp, or a single lamp meeting the intensity requirements given above.

(2) If a locomotive is equipped with a dual-lamp headlight, a peak intensity of at least 200,000 candela and at least 3,000 candela at an angle of 7.5 degrees and at least 400 candela at an angle of 20 degrees from the centerline of the locomotive when the light is aimed parallel to the tracks shall be produced by the headlight based either on a single lamp capable of individually producing the required peak intensity or on the candela produced by the headlight with both lamps illuminated. If both lamps are needed to produce the required peak intensity, then both lamps in the headlight shall be operational. The following operative lamps meet the standard set forth in this paragraph (a)(2): A single incandescent PAR–56, 200-watt, 30-volt lamp; a single halogen PAR–56, 200-watt, 30-volt lamp; a single halogen PAR–56, 350-watt, 75-volt lamp; two incandescent PAR–56, 350-watt, 75-volt lamps; or lamp(s) meeting the intensity requirements given above.

(i) A locomotive equipped with the two incandescent PAR–56, 350-watt, 75 volt lamps which has an en route failure of one lamp in the headlight fixture, may continue in service as a lead locomotive until its next daily inspection required by § 229.21 only if:

(A) Auxiliary lights burn steadily;

(B) Auxiliary lights are aimed horizontally parallel to the longitudinal centerline of the locomotive or aimed to cross no less than 400 feet in front of the locomotive.

(C) Second headlight lamp and both auxiliary lights continue to operate.

(ii) [Reserved]

* * * * *

(d) * * *

(2) Each auxiliary light shall produce a peak intensity of at least 200,000 candela or shall produce at least 3,000 candela at an angle of 7.5 degrees and at least 400 candela at an angle of 20 degrees from the centerline of the locomotive when the light is aimed parallel to the tracks. Any of the following operative lamps meet the standard set forth in this paragraph: An incandescent PAR–56, 200-watt, 30-volt lamp; a halogen PAR–56, 200-watt, 30-volt lamp; a halogen PAR–56, 350-watt, 75-volt lamp; an incandescent PAR–56, 350-watt, 75-volt lamp; or a single lamp having equivalent intensities at the specified angles.

(3) The auxiliary lights shall be aimed horizontally within 15 degrees of the longitudinal centerline of the locomotive.

* * * * *

17. Section 229.133 is amended by revising paragraphs (b) introductory text, (b)(1) and (2), and (c) to read as follows:

§ 229.133 Interim locomotive conspicuity measures—auxiliary external lights.

* * * * *

(b) Each qualifying arrangement of auxiliary external lights shall conform to one of the following descriptions:

(1) *Strobe lights.* (i) Strobe lights shall consist of two white stroboscopic lights, each with "effective intensity," as defined by the Illuminating Engineering Society's Guide for Calculating the Effective Intensity of Flashing Signal Lights (November 1964), of at least 500 candela.

(ii) The flash rate of strobe lights shall be at least 40 flashes per minute and at most 180 flashes per minute.

(iii) Strobe lights shall be placed at the front of the locomotive, at least 48 inches apart, and at least 36 inches above the top of the rail.

(2) *Oscillating light.* (i) An oscillating light shall consist of:

(A) One steadily burning white light producing at least 200,000 candela in a moving beam that depicts a circle or a

horizontal figure "8" to the front, about the longitudinal centerline of the locomotive; or

(B) Two or more white lights producing at least 200,000 candela each, at one location on the front of the locomotive, that flash alternately with beams within five degrees horizontally to either side of the longitudinal centerline of the locomotive.

(ii) An oscillating light may incorporate a device that automatically extinguishes the white light if display of a light of another color is required to protect the safety of railroad operations.

* * * * *

(c)(1) Any lead locomotive equipped with oscillating lights as described in paragraph (b)(2) that were ordered for installation on that locomotive prior to January 1, 1996, is considered in compliance with § 229.125(d) (1) through (3).

(2) Any lead locomotive equipped with strobe lights as described in paragraph (b)(1) of this section and operated at speeds no greater than 40 miles per hour, is considered in compliance with § 229.125(d) (1) through (3) until the locomotive is retired or rebuilt, whichever comes first.

* * * * *

18. Section 229.140 is added to subpart C to read as follows:

§ 229.140 Alerters.

(a) Except for locomotives covered by part 238 of this chapter, each of the following locomotives shall be equipped with a functioning alerter as described in paragraphs (b) through (d) of this section:

(1) A new locomotive that is placed in service for the first time on or after [DATE 90 DAYS AFTER THE EFFECTIVE DATE OF THE FINAL RULE] when used as a controlling locomotive and operated at speeds in excess of 25 mph.

(2) All controlling locomotives operated at speeds in excess of 25 mph on or after January 1, 2016.

(b) The alerter on locomotives subject to paragraph (a) of this section shall be equipped with a manual reset and the alerter warning timing cycle shall automatically reset as the result of any of the following operations, and at least three of the following automatic resets shall be functional at any given time:

(1) Movement of the throttle handle;

(2) Movement of the dynamic brake control handle;

(3) Movement of the operator's horn activation handle;

(4) Movement of the operator's bell activation switch;

(5) Movement of the automatic brake valve handle; or

(6) Bailing the independent brake by depressing the independent brake valve handle.

(c) All alerters shall provide an audio alarm upon expiration of the timing cycle interval. An alerter on a locomotive that is placed in service on or after [DATE 90 DAYS AFTER THE EFFECTIVE DATE OF THE FINAL RULE] shall display a visual indication to the operator at least five seconds prior to an audio alarm. The visual indication on an alerter so equipped shall be visible to the operator from their normal position in the cab.

(d) Alerter warning timing cycle interval shall be within 10 seconds of the calculated setting utilizing the formula (timing cycle specified in seconds = 2400 ÷ track speed specified in miles per hour).

(e) Any locomotive that is equipped with an alerter shall have the alerter functioning and operating as intended when the locomotive is used as a controlling locomotive.

(f) A controlling locomotive equipped with an alerter shall be tested prior to departure from each initial terminal, or prior to being coupled as the lead locomotive in a locomotive consist by allowing the warning timing cycle to expire that results in an application of the locomotive brakes at a penalty rate.

19. Part 229 is amended by adding a new subpart E to read as follows:

Subpart E—Locomotive Electronics

Sec.

Subpart E—Locomotive Electronics

§ 229.301 Purpose and scope.

(a) The purpose of this subpart is to promote the safe design, operation, and maintenance of safety-critical, as defined in § 229.305, electronic locomotive control systems, subsystems, and components.

(b) Locomotive control systems or their functions that commingle or interface with safety critical processor based signal and train control systems are regulated under part 236 subparts H and I of this chapter.

§ 229.303 Applicability.

(a) The requirements of this subpart apply to all safety-critical electronic locomotive control systems, subsystems, and components (i.e.; "products" as defined in § 229.305), except for the following:

(1) Products that are in service prior to January 12, 2011.

(2) Products that are under development as of July 12, 2011, and are placed in service prior to July 14, 2014.

(3) Products that commingle or interface with safety critical processor based signal and train control systems;

(4) Products that are used during on-track testing within a test facility; and

(5) Products that are used during on-track testing out-side a test facility, if approved by FRA. To obtain FRA approval of on-track testing outside of a test facility, a railroad shall submit a request to FRA that provides:

(i) Adequate information regarding the function and history of the product that it intends to use;

(ii) The proposed tests;

(iii) The date, time and location of the tests; and

(iv) The potential safety consequences that will result from operating the product for purposes of testing.

(b) Railroads and vendors shall identify all products that are under development to FRA by [DATE 6 MONTHS FROM PUBLICATION OF THE FINAL RULE].

(c) The exceptions provided in paragraph (a) of this section do not apply to products or product changes that result in degradation of safety, or a material increase in safety-critical functionality.

§ 229.305 Definitions.

As used in this subpart—

Component means an electronic element, device, or appliance (including hardware or software) that is part of a system or subsystem.

Configuration management control plan means a plan designed to ensure that the proper and intended product configuration, including the electronic hardware components and software version, is documented and maintained through the life-cycle of the products in use.

Executive software means software common to all installations of a given electronic product. It generally is used to schedule the execution of the site-specific application programs, run timers, read inputs, drive outputs, perform self-diagnostics, access and check memory, and monitor the execution of the application software to detect unsolicited changes in outputs.

Initialization refers to the startup process when it is determined that a product has all required data input and the product is prepared to function as intended.

Materials handling refers to explicit instructions for handling safety-critical components established to comply with procedures specified by the railroad.

New or next-generation locomotive control system means a locomotive control system using technologies or combinations of technologies not in use in revenue service as of January 12, 2011, or without established histories of safe practice.

Product means any safety critical electronic locomotive control system, subsystem, or component.

Revision control means a chain of custody regimen designed to positively identify safety-critical components and spare equipment availability, including repair/replacement tracking.

Safety Analysis refers to a formal set of documentation which describes in detail all of the safety aspects of the product, including but not limited to procedures for its development, installation, implementation, operation, maintenance, repair, inspection, testing and modification, as well as analyses supporting its safety claims.

Safety-critical, as applied to a function, a system, or any portion thereof, means the correct performance of which is essential to safety of personnel or equipment, or both; or the incorrect performance of which could cause a hazardous condition, or allow a hazardous condition which was intended to be prevented by the function or system to exist.

Subsystem means a defined portion of a system.

System refers to any electronic locomotive control system and includes all subsystems and components thereof, as the context requires.

Test facility means a track that is not part of the general railroad system of transportation and is being used exclusively for the purpose of testing equipment and has all of its public grade crossings protected.

§ 229.307 Safety Analysis.

(a) A railroad shall develop a Safety Analysis (SA) for each product subject to this subpart prior to the initial use of such product on their railroad.

(b) The SA shall:

(1) Establish and document the minimum requirements that will govern the development and implementation of all products subject to this subpart, and be based on good engineering practice and should be consistent with the guidance contained in Appendix F of this part in order to establish that a product's safety-critical functions will operate with a high degree of confidence in a fail-safe manner;

(2) Include procedures for immediate repair of safety-critical functions; and

(3) Be made available to FRA upon request.

(c) Each railroad shall comply with the SA requirements and procedures related to the development, implementation, and repair of a product subject to this subpart.

§ 229.309 Safety-critical changes and failures.

(a) Whenever a planned safety-critical design change is made to a product subject to this subpart, the railroad shall:

(1) Notify FRA's Associate Administrator for Safety of the design changes;

(2) Update the SA as required;

(3) Conduct all safety critical changes in a manner that allows the change to be audited;

(4) Specify all contractual arrangements with suppliers and private equipment owners for notification of any and all electronic safety critical changes as well as safety critical failures in their system, subsystem, or components, and the reasons from the suppliers or equipment owners, whether or not the railroad has experienced a failure of that safety critical system, subsystem, or component;

(5) Specify the railroad's procedures for action upon receipt of notification of a safety-critical change or failure of an electronic system, sub-system, or component, and until the upgrade, patch, or revision has been installed; and

(6) Identify all configuration/revision control measures designed to ensure that safety-functional requirements and safety-critical hazard mitigation processes are not compromised as a result of any such change, and that any such change can be audited.

(b) Product suppliers and private equipment owners shall report any safety critical changes and previously unidentified hazards to each railroad using the product.

(c) Private equipment owners shall establish configuration/revision control measures for control of safety critical changes and identification of previously unidentified hazards.

§ 229.311 Review of SAs.

(a) Prior to the initial planned use of a product subject to this subpart, a railroad shall inform the Associate Administrator for Safety, FRA, 1200 New Jersey Avenue, SE., Mail Stop 25, Washington, DC 20590 of the intent to place this product in service. The notification shall provide a description of the product, and identify the location where the complete SA documentation described in § 229.307 and the training and qualification program described in § 229.319 is maintained.

(b) FRA may review and/or audit the SA within 60 days of receipt of the notification or anytime after the product is placed in use.

(c) A railroad shall maintain and make available to FRA upon request all documentation used to demonstrate that the product meets the safety requirements of the SA for the life-cycle of the product.

(d) After a product is placed in service, the railroad shall maintain a database of all safety relevant hazards encountered with the product. The database shall include all hazards identified in the SA and those that had not been previously identified in the SA. If the frequency of the safety-relevant hazards exceeds the threshold set forth in the SA, then the railroad shall:

(1) Report the inconsistency by mail, facsimile, e-mail, or hand delivery to the Director, Office of Safety Assurance and Compliance, FRA, 1200 New Jersey Ave., SE., Mail Stop 25, Washington, DC 20590, within 15 days of discovery;

(2) Take immediate countermeasures to reduce the frequency of the safety relevant hazard(s) below the threshold set forth in the SA; and

(3) Provide a final report to the FRA, Director, Office of Safety Assurance and Compliance, on the results of the analysis and countermeasures taken to reduce the frequency of the safety relevant hazard(s) below the calculated probability of failure threshold set forth in the SA when the problem is resolved. For hazards not identified in the SA the threshold shall be exceeded at one occurrence.

§ 229.313 Product testing results and records.

(a) Results of product testing conducted in accordance with this subpart shall be recorded on preprinted forms provided by the railroad, or stored electronically. Electronic record keeping or automated tracking systems, subject to the provisions contained in paragraph (e) of this section, may be utilized to store and maintain any testing or training record required by this subpart.

(b) The testing records shall contain all of the following:

(1) The name of the railroad;

(2) The location and date that the test was conducted;

(3) The equipment tested;

(4) The results of tests;

(5) The repairs or replacement of equipment;

(6) Any preventative adjustments made; and,

(7) The condition in which the equipment is left.

(c) Each record shall be:

(1) Signed by the employee conducting the test, or electronically coded, or identified by the automated test equipment number;

(2) Filed in the office of a supervisory official having jurisdiction, unless otherwise noted; and

(3) Available for inspection and copying by FRA.

(d) The results of the testing conducted in accordance with this subpart shall be retained as follows:

(1) The results of tests that pertain to installation or modification of a product shall be retained for the life-cycle of the product tested and may be kept in any office designated by the railroad;

(2) The results of periodic tests required for the maintenance or repair of the product tested shall be retained until the next record is filed and in no case less than one year; and

(3) The results of all other tests and training shall be retained until the next record is filed and in no case less than one year.

(e) Electronic or automated tracking systems used to meet the requirements contained in paragraph (a) of this section shall be capable of being reviewed and monitored by FRA at any time to ensure the integrity of the system. FRA's Associate Administrator for Safety may prohibit or revoke a railroad's authority to utilize an electronic or automated tracking system in lieu of preprinted forms if FRA finds that the electronic or automated tracking system is not properly secured, is inaccessible to FRA, or railroad employees requiring access to discharge their assigned duties, or fails to adequately track and monitor the equipment. The Associate Administrator for Safety will provide the affected railroad with a written statement of the basis for the decision prohibiting or revoking the railroad from utilizing an electronic or automated tracking system.

§ 229.315 Operations and Maintenance Manual.

(a) The railroad shall maintain all documents pertaining to the installation, maintenance, repair, modification, inspection, and testing of a product subject to this part in one Operations and Maintenance Manual (OMM).

(1) The OMM shall be legible and shall be readily available to persons who conduct the installation, maintenance, repair, modification, inspection, and testing, and for inspection by FRA.

(2) At a minimum, the OMM shall contain all product vendor operation and maintenance guidance.

(b) The OMM shall contain the plans and detailed information necessary for the proper maintenance, repair, inspection, and testing of products subject to this subpart. The plans shall identify all software versions, revisions, and revision dates.

(c) Hardware, software, and firmware revisions shall be documented in the OMM according to the railroad's configuration management control plan.

(d) Safety-critical components, including spare products, shall be positively identified, handled, replaced, and repaired in accordance with the procedures specified in the railroad's configuration management control plan.

(e) A railroad shall determine that the requirements of this section have been met prior to placing a product subject to this subpart in use on their property.

§ 229.317 Training and qualification program.

(a) A railroad shall establish and implement training and qualification program for products subject to this subpart. These programs shall meet the requirements set forth in this section and in § 229.319.

(b) The program shall provide training for the individuals identified in this paragraph to ensure that they possess the necessary knowledge and skills to effectively complete their duties related to the product. These include:

(1) Individuals whose duties include installing, maintaining, repairing, modifying, inspecting, and testing safety-critical elements of the product;

(2) Individuals who operate trains or serve as a train or engine crew member subject to instruction and testing under part 217 of this chapter;

(3) Roadway and maintenance-of-way workers whose duties require them to know and understand how the product affects their safety and how to avoid interfering with its proper functioning; and

(4) Direct supervisors of the individuals identified in paragraphs (b)(1) through (3) of this section.

(c) When developing the training and qualification program required in this section, a railroad shall conduct a formal task analysis. The task analysis shall:

(1) Identify the specific goals of the program for each target population (craft, experience level, scope of work, etc.), task(s), and desired success rate;

(2) Identify the installation, maintenance, repair, modification, inspection, testing, and operating tasks that will be performed on the railroad's products, including but not limited to the development of failure scenarios and the actions expected under such scenarios;

(3) Develop written procedures for the performance of the tasks identified; and

(4) Identify any the additional knowledge, skills, and abilities above those required for basic job performance necessary to perform each task.

(d) Based on the task analysis, a railroad shall develop a training curriculum that includes formally structured training designed to impart the knowledge, skills, and abilities identified as necessary to perform each task;

(e) All individuals identified in paragraph (b) of this section shall successfully complete a training curriculum and pass an examination that covers the product and appropriate rules and tasks for which they are responsible (however, such persons may perform such tasks under the direct onsite supervision of a qualified person prior to completing such training and passing the examination);

(f) A railroad shall conduct periodic refresher training at intervals to be formally specified in the program, except with respect to basic skills for which proficiency is known to remain high as a result of frequent repetition of the task.

(g) A railroad shall conduct regular and periodic evaluations of the effectiveness of the training program, verifying the adequacy of the training material and its validity with respect to the railroad's products and operations.

(h) A railroad shall maintain records that designate individuals who are qualified under this section until new designations are recorded or for at least one year after such persons leave applicable service. These records shall be maintained in a designated location and be available for inspection and replication by FRA and FRA-certified State inspectors.

§ 229.319 Operating personnel training.

(a) The training required under § 229.317 for any locomotive engineer or other person who participates in the operation of a train using an onboard electronic locomotive control system shall address all of the following elements and shall be specified in the training program.

(1) Familiarization with the electronic control system equipment onboard the locomotive and the functioning of that equipment as part of the system and in relation to other onboard systems under that person's control;

(2) Any actions required of the operating personnel to enable or enter

data into the system and the role of that function in the safe operation of the train;

(3) Sequencing of interventions by the system, including notification, enforcement, penalty initiation and post penalty application procedures as applicable;

(4) Railroad operating rules applicable to control systems, including provisions for movement and protection of any unequipped trains, or trains with failed or cut-out controls;

(5) Means to detect deviations from proper functioning of onboard electronic control system equipment and instructions explaining the proper response to be taken regarding control of the train and notification of designated railroad personnel; and,

(6) Information needed to prevent unintentional interference with the proper functioning of onboard electronic control equipment.

(b) The training required under this subpart for a locomotive engineer, together with required records, shall be integrated into the program of training required by part 240 of this chapter.

20. Part 229 is amended by adding Appendix F to read as follows:

Appendix F to Part 229—Recommended Practices for Design and Safety Analysis

The purpose of this appendix is to provide recommended criteria for design and safety analysis that will maximize the safety of electronic locomotive control systems and mitigate potential negative safety effects. It seeks to promote full disclosure of potential safety risks to facilitate minimizing or eliminating elements of risk where practicable. It discuses critical elements of good engineering practice that the designer should consider when developing safety critical electronic locomotive control systems to accomplish this objective. The criteria and processes specified this appendix is intended to minimize the probability of failure to an acceptable level within the limitations of the available engineering science, cost, and other constraints. Railroads procuring safety critical electronic locomotive controls are encouraged to ensure that their vendor addresses each of the elements of this appendix in the design of the product being procured. FRA uses the criteria and processes set forth in this appendix (or other technically equivalent criteria and processes that may be recommended by industry) when evaluating analyses, assumptions, and conclusions provided in the SA documents.

Definitions

In addition to the definitions contained in § 229.305, the following definitions are applicable to this Appendix:

Hazard means an existing or potential condition that can result in an accident.

High degree of confidence, as applied to the highest level of aggregation, means there exists credible safety analysis supporting the conclusion that the risks associated with the product have been adequately mitigated.

Human factors refers to a body of knowledge about human limitations, human abilities, and other human characteristics, such as behavior and motivation, that shall be considered in product design.

Human-machine interface (HMI) means the interrelated set of controls and displays that allows humans to interact with the machine.

Risk means the expected probability of occurrence for an individual accident event (probability) multiplied by the severity of the expected consequences associated with the accident (severity).

Risk assessment means the process of determining, either quantitatively or qualitatively, the measure of risk associated with use of the product under all intended operating conditions.

System Safety Precedence means the order of precedence in which methods used to eliminate or control identified hazards within a system are implemented.

Validation means the process of determining whether a product's design requirements fulfill its intended design objectives during its development and life-cycle. The goal of the validation process is to determine "whether the correct product was built."

Verification means the process of determining whether the results of a given phase of the development cycle fulfill the validated requirements established at the start of that phase. The goal of the verification process is to determine "whether the product was built correctly."

Safety Assessments—Recommended Contents

The safety-critical assessment of each product should include all of its interconnected subsystems and components and, where applicable, the interaction between such subsystems. FRA recommends that such assessments contain the following:

(a) A complete description of the product, including a list of all product components and their physical relationship in the subsystem or system;

(b) A description of the railroad operation or categories of operations on which the product is designed to be used;

(c) An operational concepts document, including a complete description of the product functionality and information flows;

(d) A safety requirements document, including a list with complete descriptions of all functions, which the product performs to enhance or preserve safety, and that describes the manner in which product architecture satisfies safety requirements;

(e) A hazard log consisting of a comprehensive description of all safety relevant hazards addressed during the life cycle of the product, including maximum threshold limits for each hazard (for unidentified hazards, the threshold shall be exceeded at one occurrence);

(1) The analysis should document any assumptions regarding the reliability or availability of mechanical, electric, or electronic components. Such assumptions include MTTF projections, as well as Mean Time To Repair (MTTR) projections, unless the risk assessment specifically explains why these assumptions are not relevant to the risk assessment. The analysis should document these assumptions in such a form as to permit later automated comparisons with in-service experience (*e.g.*, a spreadsheet). The analysis should also document any assumptions regarding human performance. The documentation should be in a form that facilitates later comparisons with in-service experience.

(2) The analysis should also document any assumptions regarding software defects. These assumptions should be in a form which permits the railroad to project the likelihood of detecting an in-service software defect and later automated comparisons with in-service experience.

(3) The analysis should document all of the identified safety-critical fault paths. The documentation should be in a form that facilitates later comparisons with in-service faults.

(f) A risk assessment.

(1) The risk metric for the proposed product should describe with a high degree of confidence the accumulated risk of a locomotive control system that operates over a life-cycle of 25 years or greater. Each risk metric for the proposed product should be expressed with an upper bound, as estimated with a sensitivity analysis, and the risk value selected is demonstrated to have a high degree of confidence.

(2) Each risk calculation should consider the totality of the locomotive control system and its method of operation. The failure modes of each subsystem or component, or both, should be determined for the integrated hardware/software (where applicable) as a function of the Mean Time to Hazardous Events (MTTHE), failure restoration rates, and the integrated hardware/software coverage of all processor based subsystems or components, or both. Train operating and movement rules, along with components that are layered in order to enhance safety-critical behavior, should also be considered.

(3) An MTTHE value should be calculated for each subsystem or component, or both, indicating the safety-critical behavior of the integrated hardware/software subsystem or component, or both. The human factor impact should be included in the assessment, whenever applicable, to provide an integrated MTTHE value. The MTTHE calculation should consider the rates of failures caused by permanent, transient, and intermittent faults accounting for the fault coverage of the integrated hardware/software subsystem or component, phased-interval maintenance, and restoration of the detected failures.

(4) MTTHE compliance verification and validation should be based on the assessment of the design for verification and validation process, historical performance data, analytical methods and experimental safety critical performance testing performed on the subsystem or component. The compliance process shall be demonstrated to be compliant and consistent with the MTTHE metric and demonstrated to have a high degree of confidence.

(5) The safety-critical behavior of all non-processor based components, which are part

of a processor-based system or subsystem, should be quantified with an MTTHE metric. The MTTHE assessment methodology should consider failures caused by permanent, transient, and intermittent faults, phase interval maintenance and restoration of failures and the effect of fault coverage of each non-processor-based subsystem or component. The MTTHE compliance verification and validation should be based on the assessment of the design for verification and validation process, historical performance data, analytical methods and experimental safety critical performance testing performed on the subsystem or component. The non-processor based quantification compliance should also be demonstrated to have a high degree of confidence.

(g) A hazard mitigation analysis, including a complete and comprehensive description of all hazards to be addressed in the system design and development, mitigation techniques used, and system safety precedence followed;

(h) A complete description of the safety assessment and verification and validation processes applied to the product and the results of these processes;

(i) A complete description of the safety assurance concepts used in the product design, including an explanation of the design principles and assumptions; the designer should address each of the following safety considerations when designing and demonstrating the safety of products covered by this part. In the event that any of these principles are not followed, the analysis should describe both the reason(s) for departure and the alternative(s) utilized to mitigate or eliminate the hazards associated with the design principle not followed.

(1) *Normal operation.* The system (including all hardware and software) should demonstrate safe operation with no hardware failures under normal anticipated operating conditions with proper inputs and within the expected range of environmental conditions. All safety-critical functions should be performed properly under these normal conditions. Absence of specific operator actions or procedures will not prevent the system from operating safely. There should be no hazards that are categorized as unacceptable or undesirable. Hazards categorized as unacceptable should be eliminated by design.

(2) *Systematic failure.* It should be shown how the product is designed to mitigate or eliminate unsafe systematic failures—those conditions which can be attributed to human error that could occur at various stages throughout product development. This includes unsafe errors in the software due to human error in the software specification, design or coding phases, or both; human errors that could impact hardware design; unsafe conditions that could occur because of an improperly designed human-machine interface; installation and maintenance errors; and errors associated with making modifications.

(3) *Random failure.* The product should be shown to operate safely under conditions of random hardware failure. This includes single as well as multiple hardware failures, particularly in instances where one or more failures could occur, remain undetected (latent) and react in combination with a subsequent failure at a later time to cause an unsafe operating situation. In instances involving a latent failure, a subsequent failure is similar to there being a single failure. In the event of a transient failure, and if so designed, the system should restart itself if it is safe to do so. Frequency of attempted restarts should be considered in the hazard analysis. There should be no single point failures in the product that can result in hazards categorized as unacceptable or undesirable. Occurrence of credible single point failures that can result in hazards shall be detected and the product should achieve a known safe state before falsely activating any physical appliance. If one non-self-revealing failure combined with a second failure can cause a hazard that is categorized as unacceptable or undesirable, then the second failure should be detected and the product should achieve a known safe state before falsely activating any physical appliance.

(4) *Common Mode failure.* Another concern of multiple failures involves common mode failure in which two or more subsystems or components intended to compensate one another to perform the same function all fail by the same mode and result in unsafe conditions. This is of particular concern in instances in which two or more elements (hardware or software, or both) are used in combination to ensure safety. If a common mode failure exists, then any analysis cannot rely on the assumption that failures are independent. Examples include: the use of redundancy in which two or more elements perform a given function in parallel and when one (hardware or software) element checks/monitors another element (of hardware or software) to help ensure its safe operation. Common mode failure relates to independence, which shall be ensured in these instances. When dealing with the effects of hardware failure, the designer should address the effects of the failure not only on other hardware, but also on the execution of the software, since hardware failures can greatly affect how the software operates.

(5) *External influences.* The product should operate safely when subjected to different external influences, including:

(i) Electrical influences such as power supply anomalies/transients, abnormal/improper input conditions (*e.g.*, outside of normal range inputs relative to amplitude and frequency, unusual combinations of inputs) including those related to a human operator, and others such as electromagnetic interference or electrostatic discharges, or both;

(ii) Mechanical influences such as vibration and shock; and climatic conditions such as temperature and humidity.

(6) *Modifications.* Safety must be ensured following modifications to the hardware or software, or both. All or some of the concerns previously identified may be applicable depending upon the nature and extent of the modifications.

(7) *Software.* Software faults should not cause hazards categorized as unacceptable or undesirable.

(8) *Closed Loop Principle.* The product design should require positive action to be taken in a prescribed manner to either begin product operation or continue product operation.

(j) A human factors analysis, including a complete description of all human-machine interfaces, a complete description of all functions performed by humans in connection with the product to enhance or preserve safety, and an analysis of the physical ergonomics of the product on the operators and the safe operation of the system;

(k) A complete description of the specific training of railroad and contractor employees and supervisors necessary to ensure the safe and proper installation, implementation, operation, maintenance, repair, inspection, testing, and modification of the product;

(l) A complete description of the specific procedures and test equipment necessary to ensure the safe and proper installation, implementation, operation, maintenance, repair, inspection, test, and modification of the product. These procedures, including calibration requirements, should be consistent with or explain deviations from the equipment manufacturer's recommendations;

(m) A complete description of the necessary security measures for the product over its life-cycle;

(n) A complete description of each warning to be placed in the Operations and Maintenance Manual and of all warning labels required to be placed on equipment as necessary to ensure safety;

(o) A complete description of all initial implementation testing procedures necessary to establish that safety-functional requirements are met and safety-critical hazards are appropriately mitigated;

(p) A complete description of all post-implementation testing (validation) and monitoring procedures, including the intervals necessary to establish that safety-functional requirements, safety-critical hazard mitigation processes, and safety-critical tolerances are not compromised over time, through use, or after maintenance (repair, replacement, adjustment) is performed; and

(q) A complete description of each record necessary to ensure the safety of the system that is associated with periodic maintenance, inspections, tests, repairs, replacements, adjustments, and the system's resulting conditions, including records of component failures resulting in safety relevant hazards;

(r) A complete description of any safety-critical assumptions regarding availability of the product, and a complete description of all backup methods of operation; and

(s) The configuration/revision control measures designed to ensure that safety-functional requirements and safety-critical hazard mitigation processes are not compromised as a result of any change. Changes classified as maintenance require validation.

Guidance Regarding the Application of Human Factors in the Design of Products

The product design should sufficiently incorporate human factors engineering that is appropriate to the complexity of the product; the gender, educational, mental, and physical capabilities of the intended operators and maintainers; the degree of required human interaction with the component; and the environment in which the product will be used. HMI design criteria minimize negative safety effects by causing designers to consider human factors in the development of HMIs. As used in this discussion, "designer" means anyone who specifies requirements for—or designs a system or subsystem, or both, for—a product subject to this part, and "operator" means any human who is intended to receive information from, provide information to, or perform repairs or maintenance on a safety critical locomotive control product subject to this part.

I. FRA recommends that system designers should:

(a) Design systems that anticipate possible user errors and include capabilities to catch errors before they propagate through the system;

(b) Conduct cognitive task analyses prior to designing the system to better understand the information processing requirements of operators when making critical decisions;

(c) Present information that accurately represents or predicts system states; and

(d) Ensure that electronics equipment radio frequency emissions are compliant with appropriate Federal Communications Commission (FCC) regulations. The FCC rules and regulations are codified in Title 47 of the Code of Federal Regulations (CFR). The following documentation is applicable to obtaining FCC Equipment Authorization:

(1) *OET Bulletin Number 61 (October, 1992 Supersedes May, 1987 issue) FCC Equipment Authorization Program for Radio Frequency Devices.* This document provides an overview of the equipment authorization program to control radio interference from radio transmitters and certain other electronic products and how to obtain an equipment authorization.

(2) *OET Bulletin 63: (October 1993) Understanding The FCC Part 15 Regulations for Low Power, Non-Licensed Transmitters.* This document provides a basic understanding of the FCC regulations for low power, unlicensed transmitters, and includes answers to some commonly-asked questions. This edition of the bulletin does not contain information concerning personal communication services (PCS) transmitters operating under Part 15, Subpart D of the rules.

(3) *Title 47 Code of Federal Regulations Parts 0 to 19.* The FCC rules and regulations governing PCS transmitters may be found in 47 CFR, Parts 0 to 19.

(4) *OET Bulletin 62 (December 1993) Understanding The FCC Regulations for Computers and other Digital Devices.* This document has been prepared to provide a basic understanding of the FCC regulations for digital (computing) devices, and includes answers to some commonly-asked questions.

II. Human factors issues designers should consider with regard to the general functioning of a system include:

(a) *Reduced situational awareness and over-reliance.* HMI design shall give an operator active functions to perform, feedback on the results of the operator's actions, and information on the automatic functions of the system as well as its performance. The operator shall be "in-the loop." Designers should consider at minimum the following methods of maintaining an active role for human operators:

(1) The system should require an operator to initiate action to operate the train and require an operator to remain "in-the-loop" for at least 30 minutes at a time;

(2) The system should provide timely feedback to an operator regarding the system's automated actions, the reasons for such actions, and the effects of the operator's manual actions on the system;

(3) The system should warn operators in advance when they require an operator to take action;

(4) HMI design should equalize an operator's workload; and

(5) HMI design should not distract from the operator's safety related duties.

(b) *Expectation of predictability and consistency in product behavior and communications.* HMI design should accommodate an operator's expectation of logical and consistent relationships between actions and results. Similar objects should behave consistently when an operator performs the same action upon them. End users have a limited memory and ability to process information. Therefore, HMI design should also minimize an operator's information processing load.

(1) To minimize information processing load, the designer should:

(i) Present integrated information that directly supports the variety and types of decisions that an operator makes;

(ii) Provide information in a format or representation that minimizes the time required to understand and act; and

(iii) Conduct utility tests of decision aids to establish clear benefits such as processing time saved or improved quality of decisions.

(2) To minimize short-term memory load, the designer should integrate data or information from multiple sources into a single format or representation ("chunking") and design so that three or fewer "chunks" of information need to be remembered at any one time. To minimize long-term memory load, the designer should design to support recognition memory, design memory aids to minimize the amount of information that should be recalled from unaided memory when making critical decisions, and promote active processing of the information.

(3) When creating displays and controls, the designer shall consider user ergonomics and should:

(i) Locate displays as close as possible to the controls that affect them;

(ii) Locate displays and controls based on an operator's position;

(iii) Arrange controls to minimize the need for the operator to change position;

(iv) Arrange controls according to their expected order of use;

(v) Group similar controls together;

(vi) Design for high stimulus-response compatibility (geometric and conceptual);

(vii) Design safety-critical controls to require more than one positive action to activate (e.g., auto stick shift requires two movements to go into reverse);

(viii) Design controls to allow easy recovery from error; and

(ix) Design display and controls to reflect specific gender and physical limitations of the intended operators.

(4) Detailed locomotive ergonomics human machine interface guidance may be found in "Human Factors Guidelines for Locomotive Cabs" (FRA/ORD–98/03 or DOT–VNTSC–FRA–98–8).

(5) The designer should also address information management. To that end, HMI design should:

(i) Display information in a manner which emphasizes its relative importance;

(ii) Comply with the ANSI/HFS 100–1988 standard;

(iii) Utilize a display luminance that has a difference of at least 35cd/m2 between the foreground and background (the displays should be capable of a minimum contrast 3:1 with 7:1 preferred, and controls should be provided to adjust the brightness level and contrast level);

(iv) Display only the information necessary to the user;

(v) Where text is needed, use short, simple sentences or phrases with wording that an operator will understand and appropriate to the educational and cognitive capabilities of the intended operator;

(vi) Use complete words where possible; where abbreviations are necessary, choose a commonly accepted abbreviation or consistent method and select commonly used terms and words that the operator will understand;

(vii) Adopt a consistent format for all display screens by placing each design element in a consistent and specified location;

(viii) Display critical information in the center of the operator's field of view by placing items that need to be found quickly in the upper left hand corner and items which are not time-critical in the lower right hand corner of the field of view;

(ix) Group items that belong together;

(x) Design all visual displays to meet human performance criteria under monochrome conditions and add color only if it will help the user in performing a task, and use color coding as a redundant coding technique;

(xi) Limit the number of colors over a group of displays to no more than seven;

(xii) Design warnings to match the level of risk or danger with the alerting nature of the signal; and

(xiii) With respect to information entry, avoid full QWERTY keyboards for data entry.

(6) With respect to problem management, the HMI designer should ensure that the HMI design:

(i) Enhances an operator's situation awareness;

(ii) Supports response selection and scheduling; and

(iii) Supports contingency planning.

(7) Designers should comply with FCC requirements for Maximum Permissible Exposure limits for field strength and power

density for the transmitters operating at frequencies of 300 kHz to 100 GHz and specific absorption rate (SAR) limits for devices operating within close proximity to the body. The Commission's requirements are detailed in Parts 1 and 2 of the FCC's Rules and Regulations [47 CFR 1.1307(b), 1.1310, 2.1091, 2.1093. The FCC has a number of bulletins and supplements that offer guidelines and suggestions for evaluating compliance. These documents are not intended to establish mandatory procedures, other methods and procedures may be acceptable if based on sound engineering practice.

(i) OET Bulletin No. 65 (Edition 97–01, August 1997), "Evaluating Compliance With FCC Guidelines For Human Exposure To Radio Frequency Electromagnetic Fields";

(ii) OET Bulletin No 65 Supplement A, (Edition 97–01, August 1997), OET Bulletin No 65 Supplement B (Edition 97–01, August 1997); and

(iii) OET Bulletin No 65 Supplement C (Edition 01–01, June 2001). This bulletin provides assistance in determining whether proposed or existing transmitting facilities, operations, or devices comply with limits for human exposure to radio frequency RF fields adopted by the FCC.

Guidance for Verification and Validation of Products

The goal of this assessment is to provide an evaluation of the product manufacturer's utilization of safety design practices during the product's development and testing phases, as required by the applicable railroad's requirements, the requirements of this part, and any other previously agreed-upon controlling documents or standards. The standards employed for verification or validation, or both, of products shall be sufficient to support achievement of the applicable requirements of this part.

(a) The latest version of the following standards have been recognized by FRA as providing appropriate risk analysis processes for incorporation into verification and validation standards.

(1) U.S. Department of Defense Military Standard (MIL–STD) 882C, "System Safety Program Requirements" (January 19, 1993);

(2) CENELEC Standards as follows:

(i) EN50126: 1999, Railway Applications: Specification and Demonstration of Reliability, Availability, Maintainability and Safety (RAMS);

(ii) EN50128 (May 2001), Railway Applications: Software for Railway Control and Protection Systems;

(iii) EN50129: 2003, Railway Applications: Communications, Signaling, and Processing Systems-Safety Related Electronic Systems for Signaling; and

(iv) EN50155:2001/A1:2002, Railway Applications: Electronic Equipment Used in Rolling Stock.

(3) ATCS Specification 140, Recommended Practices for Safety and Systems Assurance.

(4) ATCS Specification 130, Software Quality Assurance.

(5) Safety of High Speed Ground Transportation Systems. Analytical Methodology for Safety Validation of Computer Controlled Subsystems. Volume II: Development of a Safety Validation Methodology. Final Report September 1995. Author: Jonathan F. Luedeke, Battelle. DOT/FRA/ORD–95/10.2.

(6) IEC 61508 (International Electrotechnical Commission), Functional Safety of Electrical/Electronic/Programmable/ Electronic Safety (E/E/P/ES) Related Systems, Parts 1–7 as follows:

(i) IEC 61508–1 (1998–12) Part 1: General requirements and IEC 61508–1 Corr. (1999–05) Corrigendum 1–Part 1: General Requirements;

(ii) IEC 61508–2 (2000–05) Part 2: Requirements for electrical/electronic/ programmable electronic safety-related systems;

(iii) IEC 61508–3 (1998–12) Part 3: Software requirements and IEC 61508–3 Corr.1(1999–04) Corrigendum 1–Part3: Software requirements;

(iv) IEC 61508–4 (1998–12) Part 4: Definitions and abbreviations and IEC 61508–4 Corr.1(1999–04) Corrigendum 1–Part 4: Definitions and abbreviations;

(v) IEC 61508–5 (1998–12) Part 5: Examples of methods for the determination of safety integrity levels and IEC 61508–5 Corr.1 (1999–04) Corrigendum 1 Part 5: Examples of methods for determination of safety integrity levels;

(vi) 1IEC 61508–6 (2000–04) Part 6: Guidelines on the applications of IEC 61508–2 and –3; and

(vii) IEC 61508–7 (2000–03) Part 7: Overview of techniques and measures.

(b) When using unpublished standards, including proprietary standards, the standards should be available for inspection and replication by the railroad and FRA and should be available for public examination.

(c) *Third party assessments.* The railroad, the supplier, or FRA may conclude it is necessary for a third party assessment of the system. A third party assessor should be "independent". An "independent third party" means a technically competent entity responsible to and compensated by the railroad (or an association on behalf of one or more railroads) that is independent of the supplier of the product. An entity that is owned or controlled by the supplier, that is under common ownership or control with the supplier, or that is otherwise involved in the development of the product would not be considered "independent".

(1) The reviewer should not engage in design efforts, in order to preserve the reviewer's independence and maintain the supplier's proprietary right to the product. The supplier should provide the reviewer access to any, and all, documentation that the reviewer requests and attendance at any design review or walk through that the reviewer determines as necessary to complete and accomplish the third party assessment. Representatives from FRA or the railroad might accompany the reviewer.

(2) Third party reviews can occur at a preliminary level, a functional level, or implementation level. At the preliminary level, the reviewer should evaluate with respect to safety and comment on the adequacy of the processes, which the supplier applies to the design, and development of the product. At a minimum, the reviewer should compare the supplier processes with industry best practices to determine if the vendor methodology is acceptable and employ any other such tests or comparisons if they have been agreed to previously with the railroad or FRA. Based on these analyses, the reviewer shall identify and document any significant safety vulnerabilities that are not adequately mitigated by the supplier's (or user's) processes. At the functional level, the reviewer evaluates the adequacy, and comprehensiveness, of the safety analysis, and any other documents pertinent to the product being assessed for completeness, correctness, and compliance with applicable standards. This includes, but is not limited to the Preliminary Hazard Analysis (PHA), all Fault Tree Analyses (FTA), all Failure Mode and Effects Criticality Analysis (FMECA), and other hazard analyses. At the implementation level the reviewer randomly selects various safety-critical software modules for audit to verify whether the system process and design requirements were followed. The number of modules audited shall be determined as a representative number sufficient to provide confidence that all un-audited modules were developed in similar manner as the audited module. During this phase the reviewer would also evaluate and comment on the adequacy of the plan for installation and test of the product for revenue service.

(d) *Reviewer Report.* Upon completion of an assessment, the reviewer prepares a final report of the assessment. The report should contain the following information:

(1) The reviewer's evaluation of the adequacy of the risk analysis, including the supplier's MTTHE and risk estimates for the product, and the supplier's confidence interval in these estimates;

(2) Product vulnerabilities which the reviewer felt were not adequately mitigated, including the method by which the railroad would assure product safety in the event of a hardware or software failure (i.e., how does the railroad or vendor assure that all potentially hazardous failure modes are identified?) and the method by which the railroad or vendor addresses comprehensiveness of the product design for the requirements of the operations it will govern (*i.e.,* how does the railroad and/or vendor assure that all potentially hazardous operating circumstances are identified? Who records any deficiencies identified in the design process? Who tracks the correction of these deficiencies and confirms that they are corrected?);

(3) A clear statement of position for all parties involved for each product vulnerability cited by the reviewer;

(4) Identification of any documentation or information sought by the reviewer that was denied, incomplete, or inadequate;

(5) A listing of each design procedure or process which was not properly followed;

(6) Identification of the software verification and validation procedures for the product's safety-critical applications, and the reviewer's evaluation of the adequacy of these procedures;

(7) Methods employed by the product manufacturer to develop safety-critical

software, such as use of structured language, code checks, modularity, or other similar generally acceptable techniques; and

(8) Methods by which the supplier or railroad addresses comprehensiveness of the product design which considers the safety elements.

PART 238—[AMENDED]

21. The authority citation for part 238 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20133, 20141, 20302–20303, 20306, 20701–20702, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49.

22. Section 238.105 is amended by revising paragraph (d)(1) to read as follows:

§ 238.105 Train electronic hardware and software safety.

* * * * *

(d) * * *

(1) Hardware and software that controls or monitors a train's primary braking system shall either:

(i) Fail safely by initiating a full service or emergency brake application in the event of a hardware or software failure that could impair the ability of the engineer to apply or release the brakes; or

(ii) Provide the engineer access to direct manual control of the primary braking system (service or emergency braking).

* * * * *

23. Section 238.309 is amended by revising paragraphs (b), (c), and (e) to read as follows:

§ 238.309 Periodic brake equipment maintenance.

* * * * *

(b) *DMU and MU locomotives.* The brake equipment and brake cylinders of each DMU or MU locomotive shall be cleaned, repaired, and tested, and the filtering devices or dirt collectors located in the main reservoir supply line to the air brake system cleaned, repaired, or replaced at intervals in accordance with the following schedule:

(1) Every 736 days if the DMU or MU locomotive is part of a fleet that is not 100 percent equipped with air dryers;

(2) Every 1,104 days if the DMU or MU locomotive is part of a fleet that is 100 percent equipped with air dryers and is equipped with PS–68, 26–C, 26–L, PS–90, CS–1, RT–2, RT–5A, GRB–1, CS–2, or 26–R brake systems. (This listing of brake system types is intended to subsume all brake systems using 26 type, ABD, or ABDW control valves and PS68, PS–90, 26B–1, 26C, 26CE, 26–B1, 30CDW, or 30ECDW engineer's brake valves.);

(3) Every 1,840 days if the DMU or MU locomotive is part of a fleet that is 100 percent equipped with air dryers and is equipped with KB–HL1, KB–HS1, or KBCT1; and,

(4) Every 736 days for all other DMU or MU locomotives.

(c) *Conventional locomotives.* The brake equipment of each conventional locomotive shall be cleaned, repaired, and tested in accordance with the schedule provided in § 229.29 of this chapter.

* * * * *

(e) *Cab cars.* The brake equipment of each cab car shall be cleaned, repaired, and tested at intervals in accordance with the following schedule:

(1) Every 1,840 days for locomotives equipped with CCB–1, CCB–2, CCB–26, EPIC 1 (formerly EPIC 3102), EPIC 3102D2, EPIC 2, KB–HS1, or Fastbrake brake systems.

(2) Every 1,476 days for that portion of the cab car brake system using brake valves that are identical to the passenger coach 26–C brake system;

(3) Every 1,104 days for that portion of the cab car brake system using brake valves that are identical to the locomotive 26–L brake system; and

(4) Every 736 days for all other types of cab car brake valves.

* * * * *

Issued in Washington, DC, on December 29, 2010.

Karen J. Rae,

Deputy Administrator.

[FR Doc. 2010–33244 Filed 1–11–11; 8:45 am]

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FEDERAL REGISTER

Vol. 76 Wednesday
No. 8 January 12, 2011

Part III

The President

Proclamation 8622—Honoring the Victims of the Tragedy in Tucson, Arizona

Federal Register
Vol. 76, No. 8
Wednesday, January 12, 2011

Presidential Documents

Title 3—

The President

Proclamation 8622 of January 9, 2011

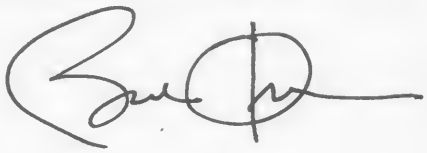
Honoring the Victims of the Tragedy in Tucson, Arizona

By the President of the United States of America

A Proclamation

As a mark of respect for the victims of the senseless acts of violence perpetrated on Saturday, January 8, 2011, in Tucson, Arizona, by the authority vested in me as President of the United States by the Constitution and the laws of the United States of America, I hereby order that the flag of the United States shall be flown at half-staff at the White House and upon all public buildings and grounds, at all military posts and naval stations, and on all naval vessels of the Federal Government in the District of Columbia and throughout the United States and its Territories and possessions until sunset, January 14, 2011. I also direct that the flag shall be flown at half-staff for the same length of time at all United States embassies, legations, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.

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



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To amend the Federal Water Pollution Control Act to clarify Federal responsibility for stormwater pollution. (Jan. 4, 2011; 124 Stat. 4128)

S. 3592/P.L. 111–379
To designate the facility of the United States Postal Service located at 100 Commerce Drive in Tyrone, Georgia, as the "First Lieutenant Robert Wilson Collins Post Office Building". (Jan. 4, 2011; 124 Stat. 4130)

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To authorize leases of up to 99 years for lands held in trust for Ohkay Owingeh Pueblo. (Jan. 4, 2011; 124 Stat. 4133)

S. 4036/P.L. 111–382
To clarify the National Credit Union Administration authority to make stabilization fund expenditures without borrowing from the Treasury. (Jan. 4, 2011; 124 Stat. 4134)

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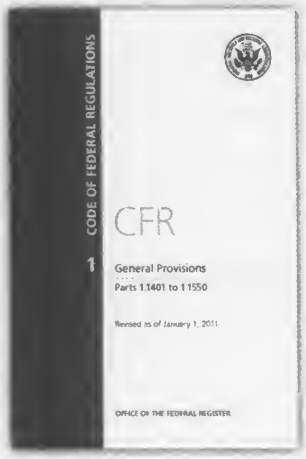

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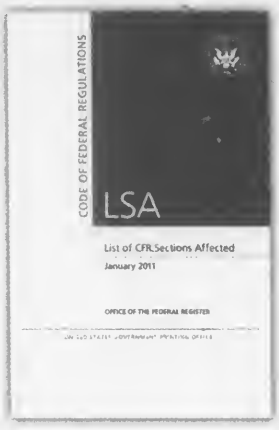

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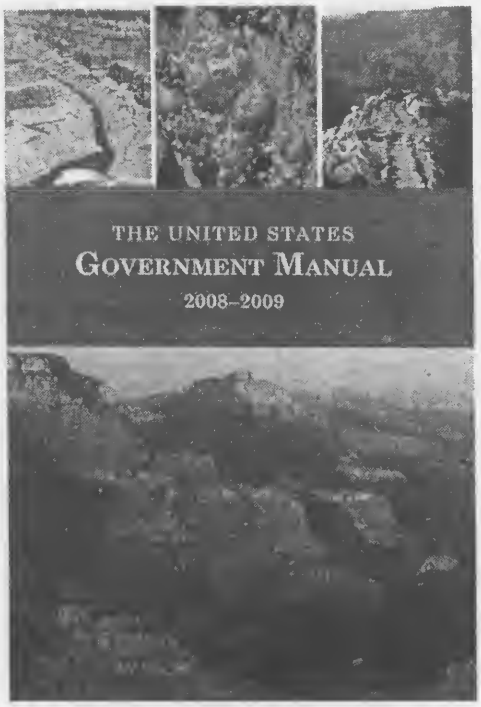

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